

No. 11907

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN R. QUINN, County Assessor, and H. L.
BYRAM, County Tax Collector, of Los An-
geles County,

Appellants,

vs.

AERO SERVICES, INC., a corporation, debtor,
Appellee.

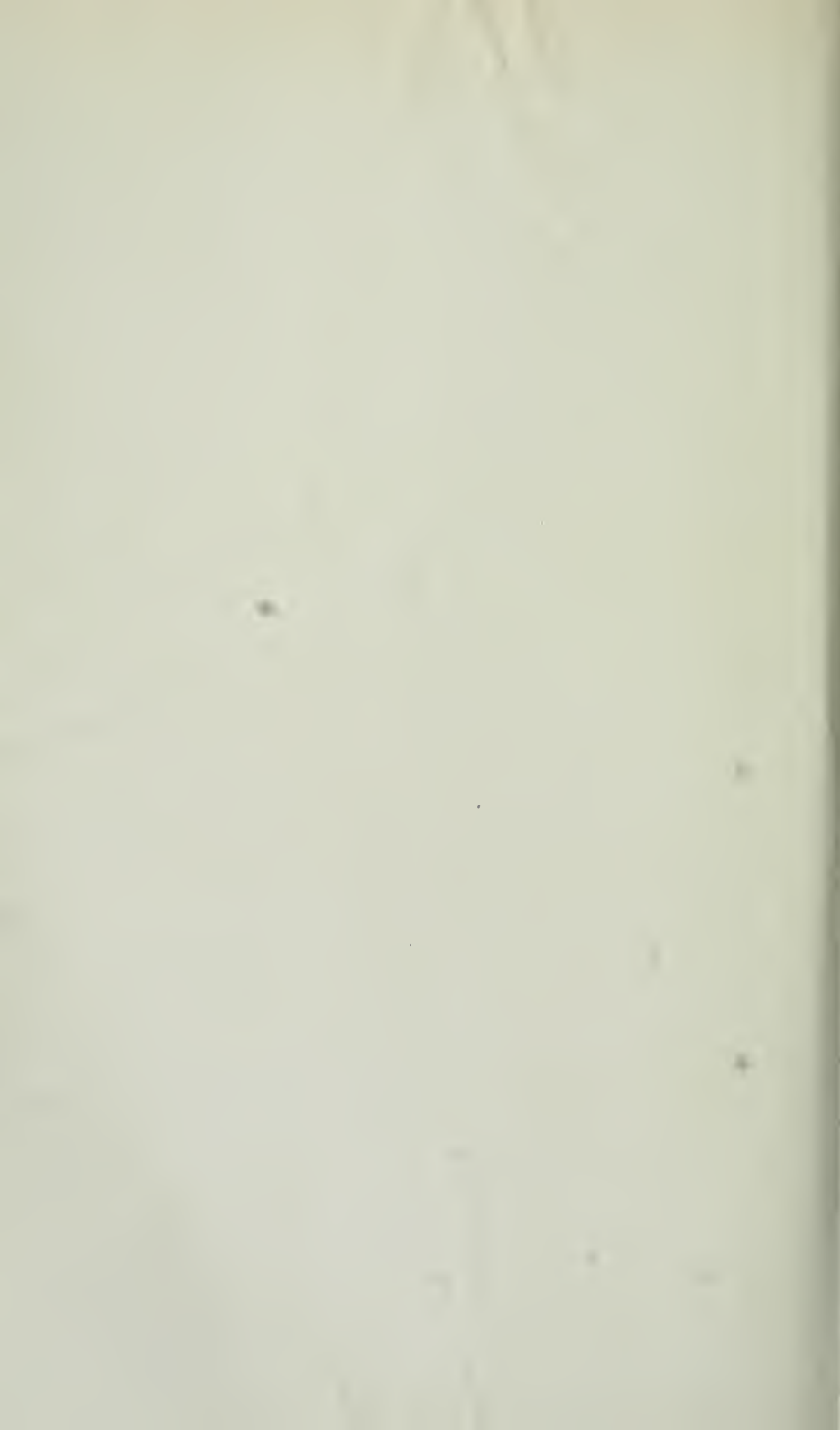
Transcript of Record

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JUN 24 1948

PAUL P. O'BRIEN,



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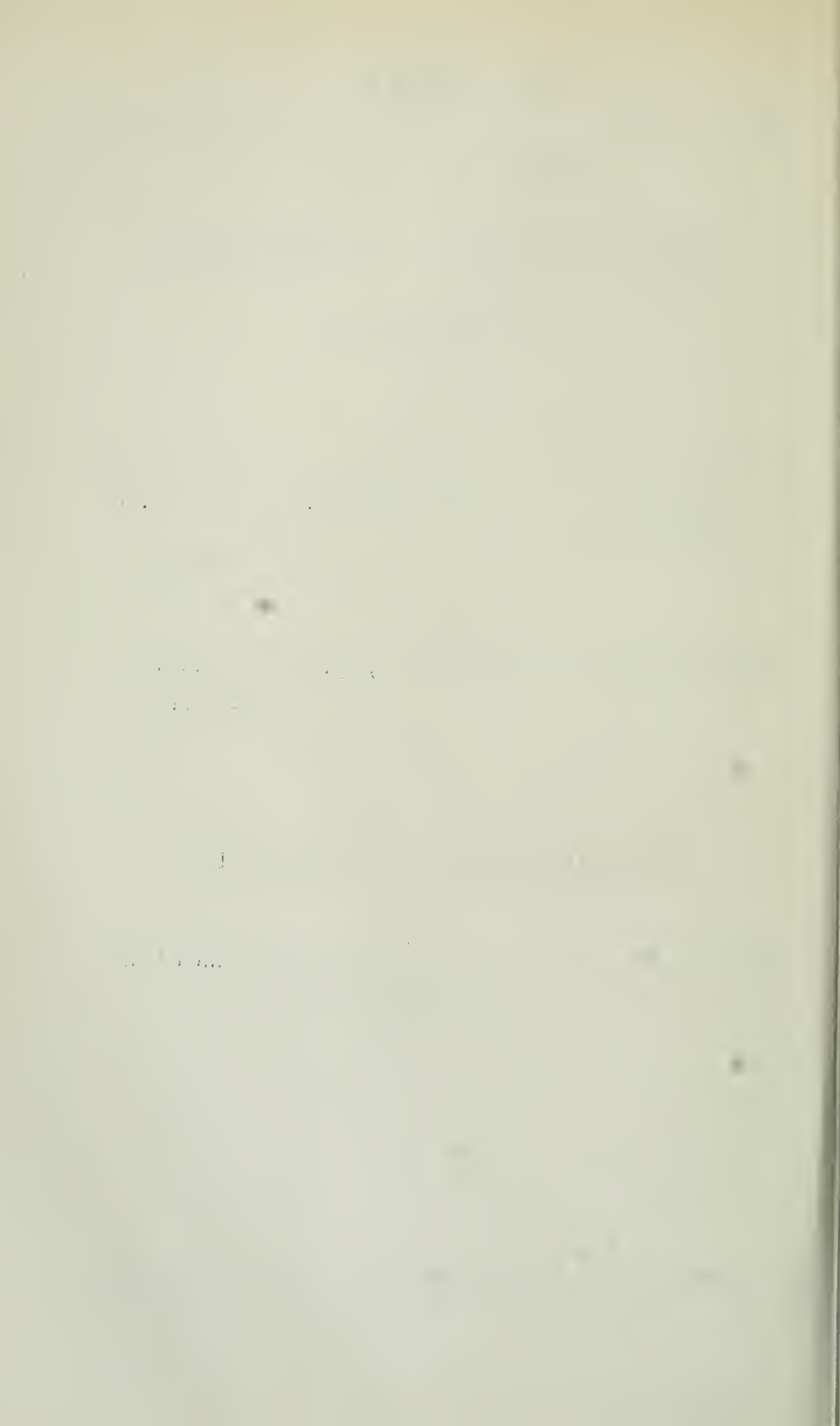
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is *printed* and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

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County Counsel,

ANDREW O. PORTER,

Deputy County Counsel,

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Los Angeles 12, Calif.

For Appellee:

COBB & UTLEY,

633 Subway Terminal Bldg.,

Los Angeles 13, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Southern District of California, Central
Division

In Bankruptcy No. 44420-O'C

In the Matter of:

AERO SERVICES, INC., a Corporation,
Debtor.

PETITION UNDER CHAPTER XI (SECTION
322) OF THE BANKRUPTCY ACT

To the Honorable Judges of the Above-Entitled
Court:

The verified petition of Aero Services, Inc., a
corporation, respectfully represents to the Court as
follows:

I.

That your petitioner is now and at all times herein
mentioned has been a corporation duly and regu-
larly organized and existing under the laws of the
State of California, having its principal place of
business at Metropolitan Airport, in the city of Van
Nuys, County of Los Angeles, State of California,
being engaged in the manufacture of aeroplanes,
aeroplane motors, parts and fittings, and is entitled
to become a bankrupt under the Acts of Congress
relating to bankruptcy, and is not a municipal, rail-
road, insurance or banking corporation or a building
and loan association.

II.

That your petitioner has had its principal place
of business and office at Metropolitan Airport, in the

city of Van Nuys, [2] County of Los Angeles, State of California, within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

III.

That no bankruptcy proceeding has heretofore been filed by your petitioner and no involuntary petition in bankruptcy is now pending against it.

IV.

That your petitioner is unable to pay its debts as they mature and proposes the arrangement with its unsecured creditors as hereinafter set forth.

V.

That your petitioner alleges, as required by Section 324, Chapter XI of the Bankruptcy Act, as amended:

- (a) That your petitioner has no executory contracts.
- (b) That a statement of affairs of your petitioner will be filed within the time directed by the above-entitled Court.
- (c) That the Clerk's filing fee will be paid upon the filing of this petition.
- (d) That your petitioner's assets are located at Metropolitan Airport, in the city of Van Nuys, County of Los Angeles, State of California.

VI.

That your petitioner has acquired certain aeroplanes from the United States Government and has

been engaged in remodeling and reconditioning said planes so that they may be sold as executive transports. That the demand for that particular type of aeroplane is extensive and an immediate sale can be effected upon the completion of said planes. That the sales price should be \$125,000. That attached hereto and marked Exhibit "D" is a list of said planes, the original cost, labor and materials expended in [3] reconditioning the same, the profit that should be realized upon the conclusion of said program, the amount required to be paid to the Reconstruction Finance Corporation, now War Assets Corporation, and the time required to complete each of said planes.

In addition to the above planes, the company owns a Douglas C-47 and a Lockheed 12 on which there is a chattel mortgage in favor of the Bank of America securing a note in the amount of \$45,000. The C-47 is now in a condition to be sold and the market value of the same is \$62,000.

That petitioner should receive from accounts receivable approximately \$30,000 within the next 60 days. That the total budget for the first month's operation is set forth in Exhibit E attached hereto and should cover work required upon four Lockheed C-60 planes to be completed in the time set forth in Schedule D attached hereto.

VII.

That your petitioner's financial position has become involved by reason of threatened action by certain small unsecured creditors followed by at-

tachment proceedings which have prevented your petitioner from procuring expected bank financing required to complete the aeroplanes in the process of being remodeled and reconditioned. That upon the completion and sale of said planes, your petitioner will be in a position to pay all of its creditors in full.

VIII.

That in order to realize the reasonable market value of said aeroplanes it is necessary for the same to be completed and that material loss will be sustained by your petitioner and the creditors in the event that your petitioner is not allowed to continue its manufacturing program without the interference of attachments and proceedings brought by creditors.

That your petitioner's past operations are as follows: [4]

That your petitioner was incorporated under the laws of the State of California in 1942 and operated as a corporation until August 31, 1944, at which time J. Gordon Hussey and associates rented the tangible properties of the corporation and carried on operations under the fictitious name of J. Gordon Hussey doing business as the Aero Services. That in January, 1946, said lease arrangement was cancelled and the corporation has since carried on the business formerly operated by J. Gordon Hussey under the corporate name. That in connection with said operations an undetermined tax liability has arisen and is now being subject to an audit by the Collector of Internal Revenue upon a corporate en-

tity basis from the formation of the corporation to date. That it is estimated that the liability for taxes will not exceed \$300,000, but the Government in order to protect its position has filed a jeopardy assessment of \$500,000.

On or about January 14, 1946, there was organized a California corporation known as Aero Lines, a corporation, which corporation acquired certain assets from your petitioner and J. Gordon Hussey. That all of the stock of said corporation is pledged to secure a note executed by J. Gordon Hussey in favor of your petitioner given as the payment price for the assets transferred by your petitioner to J. Gordon Hussey who in turn transferred the same to Aero Lines, a corporation, for and on account of the children of said J. Gordon Hussey, to wit: J. Gordon Hussey, Jr., and Constance Louise Hussey. That Aero Lines is engaged in the manufacture of an automotive house trailer. Said company is operating as a separate entity but has been processing its work through your petitioner's factory and certain employees of your petitioner devote a portion of their time to the services of said trailer company, and time sheets and reasonable charges for said services and joint use of employees is maintained, and said trailer company will make settlement monthly for said services rendered by [5] your petitioner to them.

Petitioner owns 48 acres of land adjoining the Palmdale Airport. J. Gordon Hussey has for a number of years held a lease on the property now being used for the Palmdale Airport, which leased

premises adjoins the aforesaid 48 acres. This is a separate asset of Mr. Hussey as an individual and he is willing that the same be placed under the jurisdiction of this Court until the payment of creditors' claims herein to the extent that the same may be transferred under the terms of said lease.

IX.

That J. Gordon Hussey heretofore caused to be organized a California corporation known as Aero Engines on January 18, 1946. That certain assets were transferred to said corporation conditioned upon a permit being obtained from the Corporation Commissioner of the State of California and stock being issued as permitted by said permit in payment for said assets. That no permit has been obtained and said assets have been reconveyed to your petitioner subject to existing encumbrances.

X.

That attached hereto and made a part hereof is a list of creditors now known to petitioner, with their addresses if known, and a statement of the assets of petitioner.

DEBTOR'S PROPOSED PLAN OF ARRANGEMENT

That your petitioner proposes the following plan of arrangement:

Article 1. That the creditors of petitioner be divided into classes and that the proposed classes be as follows:

Class A. Expenses of operation under plan of arrangement as may be allowed and ordered paid.

Class B. Expenses of administration that may be allowed and ordered paid.

Class C. All creditors entitled to priority as provided [6] in Section 64a, subdivisions 2, 4, and 5 of the Acts of Congress relating to Bankruptcy, as amended.

Class D. Obligations as they mature to secured creditors in accordance with the terms of their contracts.

Class E. To pay pro-rata, at such times as this Honorable Court may direct and at intervals not to exceed six months, dividends upon unsecured creditors claims until said claims are paid in full.

Article II. That said plan of arrangement be carried out by permitting the debtor to remain in possession of its assets with the right to complete and sell the aeroplanes now owned by the debtor.

Article III. That petitioner be permitted to make payments from time to time when funds are available in accordance with this plan of arrangement and that petitioner be given an extension of time within which to complete this arrangement and to discharge all of the creditors' claims as provided in this arrangement.

Article IV. That petitioner be permitted to remain in possession of its assets and continue its pro-

gram of manufacture and finishing of aeroplanes, the purchase of materials, the employment of workmen and to conduct and operate its business under the supervision and direction of this Honorable Court with authority to employ agents, managers, assistants and the necessary labor as may be required to carry out the debtor's plan of arrangement including the right to borrow money and incur obligations as may be authorized and permitted from time to time by the above-entitled Court, and to secure said obligations if required so to do, as may be ordered and directed by the above-entitled Court.

Article V. All debts incurred after the filing of this petition prior to the confirmation of the plan of arrangement shall be paid in full and in such manner as ordered by the above [7] entitled Court.

Article VI. The Court shall retain jurisdiction of the debtor's property and the operation of same until the payment in full of all creditors' claims and this Honorable Court be authorized, in its discretion, to countersign all checks signed by the debtor in possession.

Article VII. In the event any claim is in controversy in respect to classification or the amount due, the debtor, under order of Court, may make such deposit in such manner as the Court may direct in respect to said disputed claim and proceed to

pay other creditors and be restored to possession pending a final determination of said disputed claim.

XI.

That your petitioner is advised that Chapter XI of the Bankruptcy Act is the appropriate section of the Act under which to seek relief and that your petitioner verily believes that if its business can be operated in the manner herein designated and if permitted to continue to operate as proposed in this petition, your petitioner can pay all its just debts in full.

That it is necessary for the speedy and proper administration of the debtor's affairs and the equitable payment of creditors, that all creditors and parties be enjoined from commencing or prosecuting any suit or foreclosure proceeding in any form or manner other than before the above-entitled Court or without permission of the above-entitled Court.

Wherefore, your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Bankruptcy Act as amended. That all creditors and other parties be enjoined from commencing any suit in any Court or conducting any sale or foreclosure proceedings affecting the property of the petitioner or repossessing any property without order of this Honorable Court first had and obtained. That this [8] Honorable Court leave the debtor in possession, with full authority to operate and carry on the debtor's business affairs pending a confirmation

of the debtor's proposed plan of arrangement and that an adjudication be stayed. That this Honorable Court require debtor to open the necessary bank account or accounts for the purpose of properly conducting the business and that the funds may be withdrawn upon the signature and counter-signature as this Honorable Court may direct and to take such other steps and make such other orders herein as may be necessary for the protection of the debtor and all interested parties and that your petitioner be granted such other and further relief as is just and proper in the premises.

AERO SERVICES, INC.,
a Corporation,

By /s/ J. GORDON HUSSEY,
President.

By /s/ MILDRED STEVENS,
Secretary.

COBB & UTLEY,
By /s/ FRANCIS B. COBB. [9]

United States of America,
Southern District of California,
Central Division,
State of California,
County of Los Angeles—ss.

I, J. Gordon Hussey, President of Aero Services, Inc., a corporation, the petitioning debtor mentioned and described in the foregoing petition,

hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

/s/ J. GORDON HUSSEY.

Subscribed and sworn to before me, this 3rd day of June, 1946.

[Seal] /s/ BLANCHE MORRIS,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires 7-22-47. [10]

CERTIFIED COPY OF RESOLUTION
ADOPTED BY THE BOARD OF DIRECTORS
OF AERO SERVICES, INC., A CALIFORNIA CORPORATION

Resolved that the President and/or Secretary of this Corporation be and each of them hereby is authorized to file in the District Court of the United States, for the Southern District of California, Central Division, a petition for an arrangement or other appropriate petition under the applicable laws of the United States for and on behalf of the Corporation.

Be It Further Resolved that the firm of Cobb & Utley be and they hereby are employed by the Corporation as its attorneys to file said petition and prosecute such proceedings with relation thereto as in their judgment may be fit and necessary in the premises.

The foregoing resolution was put to a vote and unanimously adopted.

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of said corporation at a duly and regularly called and held meeting of said Directors held on the 31st day of May, 1946, at which all of the directors of said corporation were present and voted; that said resolution appears on the minutes of said meeting and that it has never been revoked or modified.

I also certify that the foregoing resolution was fully approved by B. D. Schuster, J. Gordon Hussey, E. W. Wheelock, and Mildred Stevens, being all of the Directors of said Corporation.

In Witness Whereof, I have hereunto set my hand and the seal of the Corporation, this 31st day of May, A.D. 1946.

[Seal] /s/ MILDRED STEVENS,
Secretary of Aero Services, Inc.,
a California Corporation.

[Endorsed]: Filed June 3, 1946. [11]

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND
ORDER OF REFERENCE UNDER SEC-
TION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on June 3, 1946, before the said Court the petition of Aero Services, Inc., a corporation, that he desires to obtain relief under Section 322 of the Bankruptcy Act, and

within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Benno M. Brink, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Aero Services, Inc., a corporation, shall attend before said referee on June 10, 1946, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Paul J. McCormick, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on June 3, 1946.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ F. BETZ,
Deputy Clerk.

[Endorsed]: Filed June 3, 1946. [12]

[Title of District Court and Cause.]

Appearances:

Harold W. Kennedy, County Counsel, and Andrew O. Porter, Deputy County Counsel, 1100 Hall of Records, Los Angeles 12, California, Mutual

9211, Attorneys for John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector, Petitioners on Review.

Cobb & Utley, 633 Subway Terminal Building, Los Angeles 13, California, MADison 64123, Attorneys for Debtor.

REFEREE'S CERTIFICATE ON PETITION
FOR REVIEW OF ORDER UPHOLDING
JURISDICTION RE TAX CLAIMS

To the Honorable J. F. T. O'Connor, Judge of the
Above-Entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby certify to the following:

The County Assessor and the County Tax Collector of Los Angeles County have duly filed their petition for the review of an order made by your Referee in this matter on September 8, 1947, in which he overruled their objections to the jurisdiction of this Court to determine in this proceeding the value of the personal property of the above-named debtor for county tax purposes.

The Proceedings

On the first Monday in March, 1946, the debtor herein was the owner of certain real and personal property. On May 14, 1946, [13] a declaration for county tax purposes was made and verified on behalf of the debtor by one V. W. Nelson, its audi-

tor, and the same was thereupon filed with the County Assessor; said statement shows that the value of the debtor's personal property was \$355,710.00 as of the first Monday in March, 1946. Thereafter, on an undisclosed date, the County Assessor valued the said personal property for county tax purposes at said sum of \$355,710.00.

On June 3, 1946, the debtor commenced this proceeding by filing herein its petition under Chapter XI of the Bankruptcy Act and, on the same date, appropriate orders were made herein permitting it to remain in possession of its assets and to continue the operation of its business under the control of this Court. The said petition under Chapter XI of the Bankruptcy Act is still pending, but no order has thus far been entered confirming the debtor's plan of arrangement with its creditors. The debtor still continues in possession of its assets, but all of its business operations have been suspended.

In the latter part of 1946, the debtor received from the County Tax Collector a tax bill covering the taxes on its real and personal property as of the first Monday in March of said year. Said taxes became a lien on the real property of the debtor as of such first Monday in March. The said tax bill shows the assessed value of the personal property of the debtor to be the aforesaid sum of \$355,710.00 and that the amount of the tax thereon is the sum of \$22,333.25.

On December 6, 1946, the debtor filed herein its petition for an order to show cause requiring the County Assessor and the County Tax Collector to

show cause why this Court should not determine the amount of taxes due by it to the County of Los Angeles and why this Court should not direct the debtor as to the manner and time of payment of such taxes. An order to show cause being issued on the said petition, the Assessor and the Tax Collector, in due course, filed their answer thereto and also their objections to the jurisdiction of [14] this Court to proceed in the premises.

After a hearing duly had, your Referee made an oral ruling in which he overruled the said objections to jurisdiction and directed that the hearing proceed on the merits. Thereupon, the Assessor and the Tax Collector brought the matter before Your Honor and Your Honor ruled that your Referee should make a formal order on the question of jurisdiction so that a review might be taken therefrom by any party aggrieved thereby. Thereafter, a further hearing was had before your Referee on the question of jurisdiction and on September 8, 1947, your Referee filed his formal findings of fact and conclusions of law and his order in which he upheld the jurisdiction of this Court in the matter. It is from this order that this review is taken.

The Questions Presented

The questions presented by this review are set forth in detail on pages 9, 10 and 11 of the petition for review which is going up with this certificate, but in the opinion of your Referee, the said questions may be summarized as follows:

(1) Is the County Assessor a quasi-judicial officer and, if so, does that fact deprive this Court of jurisdiction to determine the value of the personal property here involved for county tax purposes?

(2) Does this Court acquire exclusive jurisdiction to determine the value of the personal property here involved for county tax purposes by the filing herein of the aforesaid petition under Chapter XI of the Bankruptcy Act, in view of the fact that such petition was filed prior to the date fixed by law for application to the Board of Equalization for the equalization of taxes?

(3) Is the Board of Equalization a quasi-judicial body and, if so, is this Court deprived of jurisdiction in the matter here involved by reason of the fact that no application was made to the said Board for the [15] equalization of the taxes here in question?

(4) Is this Court without jurisdiction in the matter here involved by reason of any of the following situations:

(a) That the debtor continued the operation of its business with the authority and under the supervision of this Court;

(b) That the taxes here involved are a lien on the real property of the debtor;

(c) That the taxes here involved are entitled to priority of payment in this proceeding;

(d) That the taxes here involved are debts which are not dischargeable in bankruptcy;

(e) That the aforesaid declaration for county tax purposes was filed on behalf of the

debtor by its auditor and no other declaration was filed by the debtor;

(f) That since no application was made to the Board of Equalization for the equalization of the taxes here involved, the debtor corporation could not now question such taxes in any State Court and if this proceeding were not pending in this Court, the assessed valuation of the personal property here involved and the taxes based thereon would have become final and would have the force, finality and effect of a judgment.

The Evidence

There is no dispute here as to any of the facts here involved and, consequently, there is no evidence to transmit other than the aforesaid declaration for county tax purposes which is going up [16] with this certificate.

Referee's Findings of Fact, Conclusions of Law and Order

The originals of your Referee's findings of fact and conclusions of law and order are going up with this certificate.

Papers Submitted

1. Petition for Order to Show Cause, etc., filed December 6, 1946.
2. Answer to Petition for Order to Show Cause, etc., filed December 18, 1946.
3. Suggestion of Lack of Jurisdiction of Subject Matter, filed December 20, 1946.

4. Supplemental Memorandum of Points and Authorities, etc., filed January 4, 1947.
5. Objections to Proposed Findings of Fact and Conclusions of Law, etc., filed July 14, 1947.
6. Findings of Fact and Conclusions of Law re Tax Claims, filed September 8, 1947.
7. Order Upholding Jurisdiction re Tax Claim, filed September 8, 1947.
8. Affidavit for and Order Extending Time within which to File Petition for Review, filed September 17, 1947.
9. Petition for Review of Referee's Order by Judge, filed October 6, 1947.
10. County's Exhibit No. 1, Declaration for County Tax Purposes, verified May 14, 1946.

Respectfully submitted this 27th day of October, 1947.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed Oct. 27, 1947. [17]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
IN CONNECTION WITH TAX CLAIM

To the Honorable Benno M. Brink, referee in
bankruptcy:

The verified petition of the above-named debtor
respectfully shows:

I.

That your petitioner did on the 3rd day of June, 1946, file a petition under Chapter 11 of the Bankruptcy Act, and the above-entitled Court on said date entered an order permitting the debtor to remain in possession of its assets and to carry on its business.

II.

That your petitioner has received a tax bill from John R. Quinn, County Tax Assessor, and H. L. Byram, County Tax Collector, for a sum totaling \$24,548.77. That included in said bill is a demand for the first installment of \$23,441.92, which first installment includes personal property taxes in the amount of \$22,333.26 which are based upon a valuation of the personal property belonging to the above-named debtor on March 1, 1946 in the amount of \$355,710.00. That [18] said assessment is in error in that your petitioner did not own or have the control of any personal property of the assessed value of any sum in excess of \$148,880.00 on March 1, 1946.

III.

That your petitioner desires to pay all tax claims and that it is necessary to have a determination of the amount due the County Tax Collector of Los Angeles County prior to said payment.

Wherefore, your petitioner prays that the above-entitled court issue an order to show cause, directing John R. Quinn, County Tax Assessor, and H. L. Byram, County Tax Collector, to show cause at a time and place fixed by this court, why an order

should not be entered determining the amount of taxes due the County of Los Angeles, and directing the debtor as to the manner and time of payment, and for such other and further relief as is proper in the premises.

AERO SERVICES, INC.,
a corporation,

By /s/ J. GORDON HUSSEY,
President.

State of California,
County of Los Angeles—ss.

J. Gordon Hussey being by me first duly sworn, deposes and says: That he is the President of Aero Services, Inc., a corporation, the petitioner herein, and the debtor in the foregoing and above entitled action; that he has read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ J. GORDON HUSSEY,

Subscribed and sworn to before me this 20th day of November, 1946.

[Seal] /s/ FRANCIS B. COBB,
Notary Public in and for said County and State.

[Endorsed]: Filed Oct. 27, 1947. Edmund L. Smith, Clerk, by F. Betz, Deputy. [20]

[Title of District Court and Cause.]

ANSWER TO PETITION FOR ORDER TO
SHOW CAUSE IN CONNECTION WITH
TAX CLAIM

Come now John R. Quinn, County Tax Assessor, and H. L. Byram, County Tax Collector, and in defense to the Order to Show Cause dated December 6, 1946, why the amount of taxes due the County of Los Angeles should not be determined, allege as follows:

I.

That John R. Quinn is the duly appointed, qualified and acting Assessor of the County of Los Angeles, and that H. L. Byram is the duly appointed, qualified and acting Tax Collector of said county.

II.

Answering paragraph II of said Petition for Order to Show Cause, admit that tax bills have been rendered to the debtor as stated therein based upon the valuation as stated therein; deny that said assessment is in error in that said debtor did not own or have control of any such personal property of such assessed value on March 1, 1946, or that said assessment is in error for any other reason. [21]

III.

Answering paragraphs III of said petition, deny that it is necessary to have a determination of the amount due to the County Tax Collector of Los Angeles County prior to payment, and allege that said assessed value and the amount of the personal property taxes based thereon have been and are

fixed and final under the laws of the State of California and have the force, effect and finality of a judgment, and that the amount of said taxes was determined in accordance with the Constitution and statutes of the State of California and cannot now be changed.

For a further, separate and second defense said respondents allege:

I.

That this Court has no jurisdiction or power to reduce or to in any way alter or amend the assessed value of said property, or any other property duly found and made by the officer authorized and required by law to make said assessments, to wit, the Assessor of the County of Los Angeles. That each and all of said assessments were duly and regularly made by the said Assessor of the County of Los Angeles in the manner prescribed by law and pursuant to the authority granted to him and *the duly* imposed upon him by the laws of the State of California. That said bankrupt failed to appear or otherwise make objection within the time required by the law of the State of California as to the valuation of said property before the reviewing body created by Article XIII, Section 9 of the California Constitution, to wit, the Board of Equalization of said County. That said assessed values and the amounts of the taxes based thereon have become, and are, fixed and final under the state law, and have the force, effect and finality of a judgment. Said respondents allege that this Court is bound by the state statutes [22] and decisions

respecting the creation, imposition, assessment, amount and validity of state and county taxes.

Said respondents admit that the above entitled Court has the proper authority to determine the amount and legality of said taxes, but allege that the scope of the Court's investigation and inquiry, and the power and jurisdiction of the Court in respect to same, is limited to the question of whether or not the taxes and the amount are correct under the state laws of the State of California providing for the imposition of said taxes; allege that this Court has no power to deny to the State of California the power and right to provide for the assessment of, and fixing of the amount of taxes for the counties of said state in such manner as the Legislature of said state sees fit, and for this Court to attempt to reduce assessed values or amounts of taxes which are legal, valid and final under state laws would be to supersede the powers of the Legislature in this respect.

For a further, separate and third defense said respondents allege:

I.

That this Court has no power or jurisdiction in this proceeding to reduce or in any way alter or amend the assessed values of said property duly placed thereon by the County Assessor of the County of Los Angeles pursuant to authority of state law, for the reason that this proceeding is a proceeding under Chapter XI of the Bankruptcy Law; that said Chapter XI applies only to unsecured debts and does not affect or in any way alter the status

of secured debts. That at all times during the year 1946, being the year for which the assessment hereinbefore mentioned was made and the taxes levied, the debtor herein was the owner of, and still is the owner of, real estate in the County of Los Angeles. That the [23] law of the State of California did at all such times, and still does, provide that every tax on personal property is a lien upon the real property of the owner thereof. That by virtue of said statute all of said taxes are secured claims and debts, and their status cannot be altered or in any way affected by this Court under said Chapter XI proceeding.

For a further, separate and fourth defense said respondents allege:

I.

That this Court has no jurisdiction or power under the law to reduce the said assessed values or taxes computed thereon, or to in any way alter or amend the same, for the reason that this proceeding is, and has been at all times since its inception, a proceeding under Chapter XI of the Bankruptcy Act, and that under said Chapter XI priority claims are not affected. That under the provisions of said Chapter XI priority claims are excepted from the scope of said chapter. That said claims and debts hereinbefore mentioned, being for taxes due to a subdivision of the State of California, to wit, a county thereof, are priority claims under the Bankruptcy Act.

For a further, separate and fifth defense said respondents allege:

I.

That it is provided under section 17 of the Bankruptcy Act taxes are not dischargeable debts. That, in so far as state law is concerned, the legality of said taxes cannot be questioned or considered in any state court, and the amount of said taxes are fixed and final, and that said taxes are in every respect valid and legal. That since this is not a dischargeable debt the debtor is and remains [24] liable therefor, and is now and will hereafter be amenable to the process of the state courts in an action to compel said debtor to pay said nondischargeable taxes regardless of what action this court may take. That the debtor herein is a corporation, and if it is discharged or otherwise released, or said Chapter XI proceeding is dismissed or otherwise disposed of, said corporation will be fully as liable in every way for said tax under the state laws and before the state court, as if this Court had never assumed to reduce said assessed value or said taxes. That this Court has no power to absolve this debtor from a nondischargeable, secured priority debt.

For a further, separate and sixth defense said respondents allege:

I.

That on May 14, 1946, the said corporation debtor herein did, through its Auditor, make as required by Article XIII, Section 8 of the California Constitution, a return and statement to the County Assessor of the County of Los Angeles, under oath, setting forth the personal property owned by said

corporation, and the assessment value thereof, and that the value therein so stated under oath by said debtor corporation was the assessment value placed upon said property by the said Assessor and the same value which is alleged in the petition for order to show cause herein as having been excessive.

That the Assessor of the County of Los Angeles, and the said County, and the said Tax Collector thereof, and the Board of Equalization thereof, relied upon the representations so made under oath by the said debtor corporation of the value of its property, and included said value in the total assessed valuations of all property in the County upon which the tax rate for said County was computed in [25] order to raise sufficient funds to maintain said county government for the said tax year. That if said taxes based upon said value as so represented under oath to be correct are not collected, the funds of said Los Angeles County will be, and are, insufficient to provide for the expenses of said year, and that any amount in which said taxes might be reduced by this Court will be required to be charged to and made up by the other taxpayers of said County in subsequent years in order to make up the deficit. That said debtor corporation is by reason of the facts herein estopped from now asserting that said assessment value so represented by it under oath to be true and correct are untrue and incorrect.

For a further, separate and seventh defense said respondents allege:

I.

That the taxable date in the State of California for the year 1946 was the first Monday in March of said year. That said date occurred about three months before reference of this case under Chapter XI of the Bankruptcy Act was had, and that on that date, and for several months prior thereto, and at all times hereafter to date hereof, the debtor has been in possession of said property and operating the business of said corporation under and pursuant to authority obtained from the Court under said Chapter XI. That by an act of Congress enacted in 1934, referred to in the decision of the Supreme Court of the United States, *Boteler v. Ingalls*, 84 L.Ed. 20, said debtor, operating his business under Chapter XI, is liable for taxes the same as if they were conducting said business as individuals without the interposition of the Bankruptcy Court. No individual or other person operating a business without the protection of the Bankruptcy Court under a Chapter XI proceeding, or otherwise, has any right or redress whatsoever to reduce the [26] assessed value of the tax except by application to the County Board of Equalization which is the reviewing body created by the State Constitution, and prescribed by the state laws of the State of California. This Court has no power or jurisdiction to reduce or in any way alter or amend the assessed value or the amounts of said property or taxes for the year 1946.

Wherefore, said John R. Quinn and H. L. Byram pray that it be ordered that the petition of the debtor corporation herein for reduction of assessed

value of its personal property for the year 1946 be denied, and for such other and further relief as to the Court may seem just and meet in the premises.

HAROLD W. KENNEDY,
County Counsel, and

/s/ L. K. VOE,
Deputy County Counsel,
Attorneys for said
Respondents. [27]

State of California,
County of Los Angeles—ss.

H. L. Byram, being first duly sworn, deposes and says: That he is one of the respondents in the above entitled action; that he makes this verification on his own behalf and on behalf of the other answering respondent; that he has read the foregoing answer to petition for order to show cause in connection with tax claim and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated upon information and belief, and as to those matters that he believes it to be true.

/s/ H. L. BYRAM.

Subscribed and sworn to before me this 18th day of December, 1946.

J. F. MORONEY,
County Clerk.

By /s/ MARIE E. McPHERSON,
Deputy. [28]

[Affidavit of service by mail attached.]

[Endorsed]: Filed Oct. 27, 1947.

[Title of District Court and Cause.]

SUGGESTION OF LACK OF JURISDICTION
OF SUBJECT MATTER

(Rule 12 (h) (2) Civil Procedure.)

Comes now John R. Quinn, County Tax Assessor, and H. L. Byram, County Tax Collector, and makes suggestion to the Court that this Court lacks jurisdiction of the subject matter set forth in the petition for order to show cause in connection with tax claim filed on or about December 6, 1946, against said parties, and as grounds of said suggestion states (1) that the relief prayed in said petition for order to show cause in connection with tax claim is not within the jurisdiction of the above entitled Court to grant, and that said Court has no jurisdiction of the subject matter set forth in said petition in that the Federal Bankruptcy Court has no power to reduce or redetermine the assessed values for taxation purposes; (2) that said petition of said debtor does not state facts sufficient to raise a Federal question, or a question within the jurisdiction of this Honorable Court to consider, determine or decide for the same reason stated in ground (1) hereof.

Dated this 19th day of December, 1946.

HAROLD W. KENNEDY,
County Counsel.

By L. K. Voe,
Deputy County Counsel,

Attorney for John R. Quinn, County Tax Assessor,
and H. L. Byram, County Tax Collector [30]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING SUGGESTION OF LACK OF JURISDICTION OF SUBJECT MATTER.

The Federal Bankruptcy Court has no power to reduce or redetermine assessed values for taxation purposes where such value has already been determined by the County through its own taxing officials in accordance with the procedure prescribed by state law.

Arkansas Corporation Commission and 51 County Tax Collectors of Arkansas, Petitioners, vs. Guy A. Thompson, as Trustee, 85 Law Ed. 1244; 313 U. S. 132; 61 Sup. Ct. 888; 45 A. B. R. N. S. 462.

Memorandum of Conclusions of District Judge Hollzer, dated Aug. 30, 1941, in re Santa Fe Distilleries, Inc., a corporation, Bankrupt, No. 32667-H, in the above entitled court.

Order by Referee Hubert F. Laugharn allowing claim of John R. Quinn, County Assessor, made Oct. 28 1941, in In the Matter of Radio Supply Co., a corp., Debtor, No. 38581-BH, in the above entitled court, on objections by Receiver George Goggin to assessed values in claim of County Assessor John Quinn for \$672.00 tax on personal property and solvent credits. [31]

(Grainger & Hunt, Attorneys)

In re Ingersol Co.; Middelkamp v. Lea Trust; C. C. A. 10 (decided Feb. 28, 1945) 148 Fed. (2) 282.

Commonwealth of Penna. v. Aylward, C. C. A. 8 (decided April 11, 1946) 154 Fed. (2) 714.

Baumann v. Sheehan, C. C. A. 8 (1944) 140 Fed. (2) 747.

The County Assessor in assessing property valuations exercises judicial powers, and the assessment is very much in the nature of a judgment.

Carter v. Osburn, 150 Cal. 620;

Siebe v. Superior Court, 114 Cal. 551;

Palmer v. McMahon, 133 U. S. 660, 669; 33

Law ed. 772, 776;

Hager v. Reclamation Dist. No. 108, 111 U.S.

701, 28 Law ed. 569;

Birch v. County of Orange, 59 Cal. App. 133;

Judson on Taxation (2nd Ed.) sec. 343;

3*Cooley on Taxation* (4th Ed.) sec. 1143, p.

2296, and sec. 1144, p. 2301;

Bailey v. Berkey, C. C. A. Cal. 81. Fed. 737;

San Jose Gas Co. v. January, 57 Cal. 614;

Mahoney v. City of San Diego, 198 Cal. 388

at p. 396, pt. 1;

Bank of California v. San Francisco, 142 Cal.

276;

United States v. City State Bank (D. C. Tenn.

1937) 19 Fed. Sup. 775;

In re Donner-Hanna Coke Corp. (1925) 209

N. Y. S. 62, 212 App. Div. 338 (affirmed 241

N. Y. 530, 150 N. E. 541);

Wymore v. Markway (Mo.), 89 S. W. (2d) 9;
Evers Woolen Co. v. Town of Gilsum. 146 Atl.

511, 84 N. H. 1, 64 A. L. R. 1196;

Clare v. Curron (1932) 52 R. I. 196, 159 Atl.
835; [32]

Ex Rel. Harding v. Hart, (1928) 332 Ill.
467, 163 N. E. 769;

Pullman Co. v. Suttles. (Ga. 1938), 199 S. E.
821, 824;

The County Board of Equalization acts judicially
in equalizing assessed values.

People v. Goldtree, 44 Cal. 323;

Birch v. County of Orange, Supra;

Hammond Lumber Co. v. County of Los An-
geles, 104 Cal. App. 235;

Sec. 9, Art XIII, California State Consti-
tution.

Sections 1601 to 1615, Revenue and Taxation
Code.

The right of appeal to the County Board of
Equalization existed just the same as the right of
appeal existed in the case of Arkansas Corporation
Comm. and 51 County Tax Collectors of Arkansas,
Petitioners, vs. Thompson, Supra.

Sections 1603, 1607 to 1610, incl., Revenue and
Taxation Code.

There is a total similiarity of our County Assessor
and Equalization Board's powers and functions with
those of the Arkansas Corporation Commission as
described in Arkansas Corp. Comm. v. Thompson,

Supra. Both the Assessor and the Board of Equalization are agencies created pursuant to state constitutional requirements.

Sections 1, 2, 3, 8, 8a, 9 10, 13, Art. XIII, Constitution.

Sections 71½, 12, 13, Art. XI Constitution.

Section 25, Art. IV, Subd. 10, Constitution.

Section 1603, 1608, 1609, Revenue and Taxation Code. (Board of Equalization.)

Sections 4013, 4314 and 904, Political Code, and Sections 453, 454, et seq. Revenue and Taxation Code (Assessor).

We refer counsel and the Court on all the points herein mentioned to the quotations from above cases and statutes and the full discussion in the Amicus Curiae brief of the County of Los [33] Angeles, and in the supplement to Point 1 of Amicus Curiae brief of County of Los Angeles on file in this Court in the matter of Santa Fe Distilleries Inc., a corporation, Bankrupt, Bankruptcy No. 32667-H, wherein Judge Hollzer rendered his opinion hereinbefore cited.

Respectfully submitted,

HAROLD W. KENNEDY,

County Counsel

By L. K. Voe,

Deputy County Counsel,

Attorney for John R. Quinn, County Tax Assessor,
and H. L. Byram, County Tax Collector. [34]

Received Copy of the Within Suggestion this 19th day of December, 1946.

COBB & UTLEY,

By /s/ FRANCIS B. COBB,

Attorneys for Debtor.

[Endorsed]: Filed Oct. 27, 1947, Edmund L. Smith, Clerk; by F. Betz, Deputy.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE TAX CLAIM

The debtor herein having filed a verified petition for Order to Show Cause re Tax Claim requiring John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector, of Los Angeles County, to show cause why an order should not be entered determining the amount of taxes due said County of Los Angeles and an Order to Show Cause thereon having been regularly issued and the respondents named therein having filed a verified answer thereto admitting the rendering of the tax bill as alleged, denying that said assessment is in error, denying that said debtor did not own or have control of the personal property of such assessed valuation on said first Monday of March 1946, denying that it is necessary to fix or determine the amount of tax due and alleging six separate defenses, as follows:

- (1) That the court had no jurisdiction to reduce, alter or amend the assessed valuation of property for the reason that the assessments were

duly and regularly [36] made by the Assessor of Los Angeles County, according to law, and no objection was made before the County Board of Equalization, a quasi judicial body, and that said assessed valuation has become final under State law and has the force, finality and effect of a judgment;

- (2) That said court had no jurisdiction to reduce, alter, or amend the assessed valuations fixed by the County Assessor for the reasons that this was a proceeding under Chapter Eleven of the Bankruptcy Act and said taxes are secured by lien on real property of the debtor;
- (3) That the Court has no jurisdiction to reduce assessed valuations for the reason that the proceeding is under Chapter Eleven of the Bankruptcy Act and such taxes have priority claim;
- (4) That said taxes are not debts dischargeable in bankruptcy; the amount thereof has become fixed and final and cannot be questioned or considered in any State Court;
- (5) That said assessed valuation was based on a statement by said corporation debtor through its auditor under oath as required by Art. XIII, Sec. 8 of the California Constitution and said debtor is estopped to deny the same;
- (6) That said debtor operating its business under Chapter Eleven of the Bankruptcy Act pursuant to order of Court is liable for taxes the same as if conducting said business as individuals.

Respondents also filed written objections to the jurisdiction of said referee, claiming that he had no jurisdiction of the subject matter and no power to reduce or redetermine the [37] assessed valuation for County tax purposes, and the matter having come on regularly for hearing December 20, 1946, the debtor appearing by Cobb and Utley, by Francis Cobb, their attorneys, and respondents appearing by Harold W. Kennedy, County Counsel, and L. K. Voe, Deputy County Counsel, their attorneys, and a stipulation having been made as to the question involved, the matter was submitted as to the question of jurisdiction; on January 13th the matter was restored to the calendar and set for January 16th, at which time the objections to the jurisdiction were overruled and the Order to Show Cause was continued to February 24, 1947, for the taking of testimony; and respondents having filed a motion in the District Court for Leave to File a Petition for Writ of Prohibition and an Order to Show Cause having issued thereon, returnable February 19, 1947, before the Honorable J. F. T. O'Connor, District Judge, and the matter having been argued and the District Judge having written a Memorandum of Decision directing that a written order be made by the referee in respect to whether or not the referee had jurisdiction of the controversy, and the matter before the referee having been continued to June 17, 1947, the debtor appearing by Francis B. Cobb and the respondents by Harold W. Kennedy, County Counsel, and Andrew O. Porter, Deputy County Counsel, the Court now makes the following Findings of Fact:

FINDINGS OF FACT

The Court finds:

I.

That on the first Monday in March 1946, the above named debtor was the owner of certain real and personal property;

II.

That there existed on the first Monday in March 1946, a lien on said real property for the amount of tax thereafter assessed against said real and personal property; [38]

III.

That on May 14, 1946, a declaration was made and verified on behalf of said debtor corporation by V. W. Nelson, auditor thereof, and thereupon filed with the Assessor of Los Angeles County as required by law; that said statement was introduced in evidence and shows that the value of the personal property in question for tax purposes was \$355,710.00; that it was and is contended by this debtor that said V. W. Nelson had no authority or authorization to file said declaration and that the values contained therein are incorrect;

IV.

That on June 3, 1946, the above named debtor filed a petition under Chapter Eleven of the Bankruptcy Act and this court on said date entered an order permitting the debtor to remain in possession of its assets and to carry on its business under the supervision of this court; that by the filing of said petition this court acquired exclusive jurisdiction of the said debtor and its property, wherever located;

V.

That the Board of Supervisors of Los Angeles County sits as a Board of Equalization on the first Monday in July and continuing until the business of equalization is disposed of, but not later than the third Monday in July; during such time a taxpayer has the right to appear in person or by agent and ask for an equalization or reduction in the assessed value of his property; that no appearance was made before said Board of Equalization in the year 1946 on behalf of said debtor;

VI.

That after the filing of these proceedings respondents H. L. Byram, County Tax Collector, submitted a tax bill to the said debtor; that said tax bill shows the assessed valuation of the personal property in question to be \$355,710.00; that the [39] total tax, which is a lien on said real property, amounts to \$24,548.77; that the first installment thereof amounts to \$23,441.92, which installment includes the sum of \$22,333.25, which is the tax on said personal property;

VII.

That the first installment of County taxes which includes half the tax on real property and the entire tax on secured personal property was claimed by the taxing agency to be due and payable November 1, 1946, and delinquent after 5 p.m. on December 5, 1946;

VIII.

That on December 6, 1946, the debtor herein filed his Petition for Order to Show Cause in connection

with said tax claim; that the sole controverted allegation therein is that petitioner did not own or have control of any personal property of the assessed valuation of any sum in excess of \$148,880.00 on the first Monday in March, 1946;

IX.

That said debtor owned and had control on the first Monday in March, 1946 of all the personal property listed in the declaration made in its behalf by V. W. Nelson, auditor, and assessed by the County Assessor; that the sole question before this court is the determination of the value of such property for county tax purposes on the first Monday in March, 1946;

X.

That there are no conflicting liens involved herein; that there is no error of calculation in determining the tax claimed to be due by the County of Los Angeles.

From the Foregoing Findings of Facts the Court Makes the Following

CONCLUSIONS OF LAW

I.

That, at the time the aforesaid petition under Chapter Eleven of the Bankruptcy Act was filed in this proceeding, the assessment for County tax purposes on the personal property here involved had not become final, and that, if the said petition had not been filed, the debtor corporation could have applied to the Board of Supervisors of Los Angeles County, sitting as a Board of Equalization, for an

equalization or reduction of said assessment, and that, accordingly, this Court, ever since the filing herein of the said petition under Chapter Eleven of the Bankruptcy Act, has had and still has exclusive jurisdiction under section 64 (a) 4 and section 311 of the Bankruptcy Act to determine the value of the said personal property for County tax purposes.

Dated this 8th day of September, 1947.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed Oct. 27, 1947, Edmund L. Smith, Clerk; by F. Betz, Deputy. [41]

[Title of District Court and Cause.]

ORDER UPHOLDING JURISDICTION
RE TAX CLAIM

It appearing that the debtor herein having filed its verified petition for Order to Show Cause re Tax Claim requiring John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector, of Los Angeles County, to show cause why an order should not be entered determining the amount of taxes due said County of Los Angeles and an Order to Show Cause thereon having been regularly issued and the respondents named therein having filed a verified answer thereto admitting the rendering of the tax bill as alleged, denying that said assessment is in error, denying that said debtor did not own or have control of the personal property of such assessed

valuation on said first Monday of March 1946, denying that it is necessary to fix or determine the amount of tax due and alleging six separate defenses, as follows:

- (1) That the Court had no jurisdiction to reduce, alter or amend the assessed valuation of property for the [42] reason that the assessments were duly and regularly made by the Assessor of Los Angeles County, according to law, and no objection was made before the County Board of Equalization, a quasi judicial body, and that said assessed valuation has become final under State law and has the force, finality and effect of a judgment;
- (2) That said Court had no jurisdiction to reduce, alter or amend the assessed valuations fixed by the County Assessor for the reasons that this was a proceeding under Chapter Eleven of the Bankruptcy Act and said taxes are secured by lien on real property of the debtor;
- (3) That the Court has no jurisdiction to reduce assessed valuations for the reason that the proceeding is under Chapter Eleven of the Bankruptcy Act and such taxes have priority claim;
- (4) That said taxes are not debts dischargeable in bankruptcy; the amount thereof has become fixed and final and cannot be questioned or considered in any State Court;
- (5) That said assessed valuation was based on a statement by said corporation debtor through its auditor under oath as required by Art. XIII,

Sec. 8 of the California Constitution and said debtor is estopped to deny the same;

- (6) That said debtor operating its business under Chapter Eleven of the Bankruptcy Act pursuant to order of Court is liable for taxes the same as if conducting said business as individuals;

And it appearing that respondents also filed written objections to the jurisdiction of said referee, claiming that he [43] had no jurisdiction of the subject matter and no power to reduce or redetermine the assessed valuation for County tax purposes, and the matter having come on regularly for hearing December 20, 1946, the debtor appearing by Cobb and Utley, by Francis Cobb, their attorneys, and respondents appearing by Harold W. Kennedy, County Counsel, and L. K. Voe, Deputy County Counsel, their attorneys, and a stipulation having been made as to the question involved, the matter was submitted as to the question of jurisdiction; on January 13th the matter was restored to the calendar and set for January 16, at which time the objections to the jurisdiction were overruled and the Order to Show Cause was continued to February 24, 1947, for the taking of testimony; and respondents having filed a motion in the District Court for Leave to File a Petition for Writ of Prohibition and an Order to Show Cause having issued thereon, returnable February 19, 1947, before the Honorable J. F. T. O'Connor, District Judge, and the matter having been argued and the District Judge having

written a Memorandum of Decision directing that a written order be made by the referee in respect to whether or not the referee had jurisdiction of the controversy, and the matter before the referee having been continued to June 17, 1947, the debtor appearing by Francis B. Cobb and the respondents by Harold W. Kennedy, County Counsel, and Andrew O. Porter, Deputy County Counsel, the Court having made and filed herein its Findings of Facts and Conclusions of Law, now makes its order as follows:

I.

It Is Ordered, Adjudged and Decreed that the objections to the jurisdiction of this court of John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, be and the same are hereby overruled and denied. [44]

II.

It Is Further Ordered that said petition shall go off calendar pending review of this decision, to be re-set on the calendar by stipulation or by either party on reasonable notice.

Dated this 8th day of September, 1947.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed Oct. 27, 1947, Edmund L. Smith, Clerk; by F. Betz, Deputy. [45]

[Title of District Court and Cause.]

AFFIDAVIT FOR AND ORDER EXTENDING
TIME WITHIN WHICH TO FILE PETI-
TION FOR REVIEW

State of California,
County of Los Angeles—ss.

Andrew O. Porter, being first duly sworn, on oath
deposes and says:

That he is one of the attorneys for the respond-
ents herein, John R. Quinn, County Assessor, and
H. L. Byram, County Tax Collector, of Los An-
geles County;

That said respondents feel aggrieved by the order
entered herein by the Referee herein, Benno M.
Brink, on the 8th day of September, 1947, and desire
to file a petition for review to the United States
District Court of said order made by said Referee
on the 8th day of September, 1947.

Affiant further states that both he and his asso-
ciates have had no opportunity to prepare said peti-
tion for review due [46] to the pressure of other
litigation and other work, and prays that an order
be made herein by this Court extending the time
within which respondents herein may file their peti-
tion for review up to and including the 8th day of
October, 1947.

/s/ ANDREW O. PORTER.

Subscribed and sworn to before me, this 17th day
of September, 1947.

J. F. MORONEY,

County Clerk.

By /s/ MARIE E. McPHERSON,

Deputy.

ORDER

Good cause appearing therefor,

It is hereby ordered that the respondents herein, John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector, of Los Angeles County, shall be and are hereby granted up to and including the 8th day of October, 1947, within which to file their petition for review of the order made by this Court on the 8th day of September, 1947, to the United States District Court of this District in the above entitled proceeding.

Dated: September 17, 1947.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed Oct. 27, 1947. Edmund L. Smith, Clerk; by F. Betz, Deputy. [47]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER BY JUDGE

To Benno Brink, Esq., Referee in Bankruptcy:

The debtor herein having filed a verified petition on December 6, 1946, for Order to Show Cause re Tax Claim requiring John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector, of Los Angeles County, to show cause why an order should not be entered determining the amount of taxes due said County of Los Angeles and an Order to Show Cause thereon having been regularly issued and the

respondents named therein having filed a verified answer thereto admitting the rendering of the tax bill as alleged, denying that said assessment is in error, denying that said debtor did not own or have control of the personal property of such assessed valuation on said first Monday of March 1946, denying that it is necessary to fix or determine the amount of tax due and alleging six separate defenses, as follows:

1. That the court had no jurisdiction to reduce, alter or amend the assessed valuation of property for the reason [48] that the assessments were duly and regularly made by the Assessor of Los Angeles County, according to law, and no objection was made before the County Board of Equalization, a quasi judicial body, and that said assessed valuation has become final under State law and has the force, finality and effect of a judgment;
2. That said court had no jurisdiction to reduce, alter, or amend the assessed valuations fixed by the County Assessor for the reasons that this was a proceeding under Chapter Eleven of the Bankruptcy Act and said taxes are secured by lien on real property of the debtor;
3. That the Court had no jurisdiction to reduce assessed valuations for the reason that the proceeding is under Chapter Eleven of the Bankruptcy Act and such taxes have priority claim;

4. That said taxes are not debts dischargeable in bankruptcy; the amount thereof has become fixed and final and cannot be questioned or considered in any State Court;
5. That said assessed valuation was based on a statement by said corporation debtor through its auditor under oath as required by Art. XIII, Sec. 8 of the California Constitution and said debtor is estopped to deny the same;
6. That said debtor operating its business under Chapter Eleven of the Bankruptcy Act pursuant to order of Court is liable for taxes the same as if conducting said business as individuals.

Respondents also filed written objections to the jurisdiction of said referee, claiming that he had no jurisdiction of the subject matter and no power to reduce or redetermine the assessed [49] valuation for County tax purposes, and the matter having come on regularly for hearing December 20, 1946, the debtor appearing by Cobb and Utley, by Francis Cobb, their attorneys, and respondents appearing by Harold W. Kennedy, County Counsel, and L. K. Voe, Deputy County Counsel, their attorneys, and a stipulation having been made as to the question involved, the matter was submitted as to the question of jurisdiction; on January 13th the matter was restored to the calendar and set for January 16th, at which time the objections to the jurisdiction were overruled and the Order to Show Cause was continued to February 24, 1947, for the taking

of testimony; and respondents having filed a motion in the District Court for Leave to File a Petition for Writ of Prohibition and an Order to Show Cause having issued thereon, returnable February 19, 1947, before the Honorable J. F. T. O'Connor, District Judge, and the matter having been argued and the District Judge having written a Memorandum of Decision directing that a written order be made by the referee in respect to whether or not the referee had jurisdiction of the controversy, and the matter before the referee having been continued to June 17, 1947, the debtor appearing by Francis B. Cobb and the respondents by Harold W. Kennedy, County Counsel, and Andrew O. Porter, Deputy County Counsel, the Court ruled it had jurisdiction and made the following Findings of Fact and Conclusions of Law in words and figures as follows (omitting the recital which is substantially as stated above):

FINDINGS OF FACT

The Court finds:

I.

That on the first Monday in March 1946, the above named debtor was the owner of certain real and personal property;

II.

That there existed on the first Monday in March 1946, a [50] lien on said real property for the amount of tax thereafter assessed against said real and personal property;

III.

That on May 14, 1946, a declaration was made and verified on behalf of said debtor corporation by V. W. Nelson, auditor thereof, and thereupon filed with the Assessor of Los Angeles County as required by law; that said statement was introduced in evidence and shows that the value of the personal property in question for tax purposes was \$355,710.00; that it was and is contended by this debtor that said V. W. Nelson had no authority or authorization to file said declaration and that the values contained therein are incorrect;

IV.

That on June 3, 1946, the above-named debtor filed a petition under Chapter Eleven of the Bankruptcy Act and this court on said date entered an order permitting the debtor to remain in possession of its assets and to carry on its business under the supervision of this court; that by the filing of said petition this court acquired exclusive jurisdiction of the said debtor and its property, wherever located;

V.

That the Board of Supervisors of Los Angeles County sits as a Board of Equalization on the first Monday in July and continuing until the business of equalization is disposed of, but not later than the third Monday in July; during such time a taxpayer has the right to appear in person or by agent and ask for an equalization or reduction in the assessed value of his property; that no appearance was made before said Board of Equalization in the year 1946 on behalf of said debtor;

VI.

That after the filing of these proceedings respondents H. L. Byram, County Tax Collector, submitted a tax bill to the said [51] debtor; that said tax bill shows the assessed valuation of the personal property in question to be \$355,710.00; that the total tax, which is a lien on said real property, amounts to \$24,548.77; that the first installment thereof amounts to \$23,441.92, which installment includes the sum of \$22,333.25, which is the tax on said personal property;

VII.

That the first installment of County taxes which includes half the tax on real property and the entire tax on secured personal property was claimed by the taxing agency to be due and payable November 1, 1946, and delinquent after 5 p.m. on December 5, 1946;

VIII.

That on December 6, 1946, the debtor herein filed his Petition for Order to Show Cause in connection with said tax claim; that the sole controverted allegation therein is that petitioner did not own or have control of any personal property of the assessed valuation of any sum in excess of \$148,880.00 on the first Monday in March, 1946;

IX.

That said debtor owned and had control on the first Monday in March, 1946, of all the personal property listed in the declaration made in its behalf by V. W. Nelson, auditor, and assessed by the

County Assessor; that the sole question before this court is the determination of the value of such property for county tax purposes on the first Monday in March, 1946;

X.

That there are no conflicting liens involved herein; that there is no error of calculation in determining the tax claimed to be due by the County of Los Angeles.

From the Foregoing Findings of Facts the Court Makes the Following

CONCLUSIONS OF LAW

I.

That, at the time the aforesaid petition under Chapter Eleven of the Bankruptcy Act was filed in this proceeding, the assessment for County tax purposes on the personal property here involved had not become final, and that, if the said petition had not been filed, the debtor corporation could have applied to the Board of Supervisors of Los Angeles County, sitting as a Board of Equalization, for an equalization or reduction of said assessment, and that, accordingly, this Court, ever since the filing herein of the said petition under Chapter Eleven of the Bankruptcy Act, has had and still has exclusive jurisdiction under section 64 (a) 4 and section 311 of the Bankruptcy Act to determine the value of the said personal property for County tax purposes.

Dated this 8th day of September, 1947.

BENNO M. BRINK,
Referee in Bankruptcy.

And the Court made and entered its Order in words and figures as follows:

ORDER UPHOLDING JURISDICTION
RE TAX CLAIM

It appearing that the debtor herein having filed its verified petition for Order to Show Cause re Tax Claim requiring John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector, of Los Angeles County, to show cause why an order should not be entered determining the amount of taxes due said County of Los Angeles and an Order to Show Cause thereon having been regularly issued and the respondents named therein having filed a verified answer thereto admitting the rendering of the tax bill as alleged, denying that said assessment is in error, denying that said debtor [53] did not own or have control of the personal property of such assessed valuation on said first Monday of March, 1946, denying that it is necessary to fix or determine the amount of tax due and alleging six separate defenses, as follows:

- (1) That the Court had no jurisdiction to reduce, alter or amend the assessed valuation of property for the reason that the assessments were duly and regularly made by the Assessor of Los Angeles County, according to law, and no objection was made before the County Board of Equalization, a quasi judicial body, and that said assessed valuation has become final under State law and has the force, finality and effect of a judgment;

- (2) That said Court had no jurisdiction to reduce, alter or amend the assessed valuations fixed by the County Assessor for the reasons that this was a proceeding under Chapter Eleven of the Bankruptcy Act and said taxes are secured by lien on real property of the debtor;
- (3) That the Court has no jurisdiction to reduce assessed valuations for the reason that the proceeding is under Chapter Eleven of the Bankruptcy Act and such taxes have priority claim;
- (4) That said taxes are not debts dischargeable in bankruptcy; the amount thereof has become fixed and final and cannot be questioned or considered in any State Court;
- (5) That said assessed valuation was based on a statement by said corporation debtor through its auditor under oath as required by Art. XIII, Sec. 8 of the California Constitution and said debtor is estopped to deny the same;
- (6) That said debtor operating its business under Chapter Eleven of the Bankruptcy Act pursuant to order of Court is liable for taxes the same as if conducting said business as individuals; [54]

And it appearing that respondents also filed written objections to the jurisdiction of said referee, claiming that he had no jurisdiction of the subject matter and no power to reduce or redetermine the assessed valuation for County tax purposes, and

the matter having come on regularly for hearing December 20, 1946, the debtor appearing by Cobb and Utley, by Francis Cobb, their attorneys, and respondents appearing by Harold W. Kennedy, County Counsel, and L. K. Voe, Deputy County Counsel, their attorneys, and a stipulation having been made as to the question involved, the matter was submitted as to the question of jurisdiction; on January 13th the matter was restored to the calendar and set for January 16, at which time the objections to the jurisdiction were overruled and the Order to Show Cause was continued to February 24, 1947, for the taking of testimony; and respondents having filed a motion in the District Court for Leave to File a Petition for Writ of Prohibition and an Order to Show Cause having issued thereon, returnable February 19, 1947, before the Honorable J. F. T. O'Connor, District Judge, and the matter having been argued and the District Judge having written a Memorandum of Decision directing that a written order be made by the referee in respect to whether or not the referee had jurisdiction of the controversy, and the matter before the referee having been continued to June 17, 1947, the debtor appearing by Francis B. Cobb and the respondents by Harold W. Kennedy, County Counsel, and Andrew O. Porter, Deputy County Counsel, the Court having made and filed herein its Findings of Facts and Conclusion of Law, now makes its order as follows:

I.

It Is Ordered, Adjudged and Decreed that the objections to the jurisdiction of this court of John

R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, be and the same are hereby overruled and denied.

II.

It Is Further Ordered that said petition shall go off calendar pending review of this decision, to be re-set on the calendar by stipulation or by either party on reasonable notice.

Dated this 8th day of September, 1947.

BENNO M. BRINK,
Referee in Bankruptcy.

That said order is erroneous for the reason that the sole question before the Court is the determination of the value of the property for County tax purposes on the first Monday in March, 1946 (Finding of Fact IX); that the Court has no jurisdiction to make such determination or to reduce, alter or in any way amend the assessed valuation, for the following reasons:

I.

That the assessed value of such property was determined by the County Assessor; that the County Assessor is a quasi-judicial officer; his assessment was regularly made in accordance with the Constitution and laws of the State of California, and is in the nature of a judgment. That said assessed value and the amount of the taxes based thereon have become final under State law and cannot now be questioned in any State court and have the force, finality and effect of a judgment.

II.

That the assessed valuation was determined by the County Assessor and equalized by the County Board of Equalization in accordance with State law, and no appearance or objection was made before the County Board of Equalization, a quasi-judicial body, and the said assessed valuation and the amount of the tax [56] based thereon have become final under State law and have the force, finality and effect of a judgment.

III.

That said debtor in possession, pursuant to order of court, operating its business under Chapter XI of the Bankruptcy Act, is liable for taxes and subject to the jurisdiction of the taxing authorities the same as if conducting said business as an individual.

IV.

That the debtor in possession, pursuant to order of Court, and liable for said taxes failed to apply to the County Board of Equalization and to object to said assessment within the time allowed by law, although it had ample opportunity to do so, and is therefore estopped to question the same.

V.

That the time to appear before the County Board of Equalization was not extended by any provision of the Bankruptcy Act; or if it was, the time has expired, and in any event the failure to appear before the Board of Equalization cannot confer jurisdiction on the bankruptcy court.

VI.

That the Federal Court will not act until remedies provided by State law are exhausted, and no appearance or objection has been made by or on behalf of said debtor before the County Board of Equalization, which is the remedy provided by State law in such cases.

VII.

That this is a proceeding under Chapter XI of the Bankruptcy Act and said taxes are secured by lien on real property of the debtor. [57]

VIII.

That the proceeding is under Chapter XI of the Bankruptcy Act and such taxes have a priority claim.

IX.

That said taxes are not debts dischargeable in bankruptcy and the amount thereof has become fixed and final and cannot be questioned or considered in any State court.

X.

That no other declaration having been filed by the debtor corporation, as required by law, it cannot now question the authority of V. W. Nelson, admittedly its Auditor, to file the declaration in question and under State law it is immaterial that the values contained in said declaration are incorrect.

XI.

That the Court should have sustained the objections and dismissed the debtor's petition because it has no jurisdiction to grant the relief prayed for in the debtor's petition as limited by the stipulation.

XII.

That the Court should have sustained the objections and dismissed the debtor's petition because the debtor's petition does not state facts sufficient to raise a federal question within the jurisdiction of said Court to consider.

That for each and every one of the above-stated reasons said order is erroneous, and the objections to the jurisdiction should have been sustained and the debtor's position dismissed.

Wherefore, your petitioners pray for a review of the said [58] order by the Judge, and that the said order be vacated and set aside and that the Referee be directed to sustain the objections to the jurisdiction and to dismiss the petition of the debtor herein for order to show cause re tax claim with prejudice.

Dated: October 6, 1947.

JOHN R. QUINN,

County Assessor, and

H. L. BYRAM,

County Tax Collector.

By /s/ H. L. BYRAM.

HAROLD W. KENNEDY,

County Counsel, and

/s/ ANDREW O. PORTER,

Deputy County Counsel. [59]

[Affidavit of service by mail attached.]

[Endorsed]: Filed Oct. 27, 1947. Edmund L. Smith, Clerk; By F. Betz, Deputy.

At a stated term, to wit: The September Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 31st day of December in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable J. F. T. O'Connor,
District Judge.

[Title of Cause.]

This matter having heretofore come before the Court for hearing on petition of John R. Quinn, County Assessor, et al., for review of referee's order upholding jurisdiction re tax claims, and having been taken under submission and duly considered by the Court, the Court now causes its Decision to be filed and pursuant thereto, the Court holds that the objection to the jurisdiction should be overruled. [61]

United States District Court, Southern District of
California, Central Division

Bankruptcy No. 44,420 O'C

In the Matter of
AERO SERVICES, INC., a corporation,
Debtor.

[Notation]: Notified All—Harold W. Kennedy, County Counsel, and Andrew O. Porter, Deputy County Counsel, of Los Angeles,

attorneys for John R. Quinn, County Assessor and H. L. Byram, County Tax Collector, Petitioners on Review; Hugo A. Steinmeyer and John E. Walter, of Los Angeles, attorney for Bank of America, Petitioner on Review; Francis Cobb of Cobb & Utley, of Los Angeles, attorney for Debtor. O'Connor, J. F. T., Judge.

OPINION

The above entitled matter was before this court on a prior hearing. At that time the County Assessor, John R. Quinn, and H. L. Byram, the County Tax Collector, of Los Angeles County, filed petitions for a Writ of Prohibition praying that same be directed to the Honorable Benno M. Brink, Referee in Bankruptcy, prohibiting him from proceeding to re-determine, amend, or alter the assessed valuation of the property of the Aero Services Inc., a California corporation, the debtor corporation, as fixed by the County Assessor; and prohibiting him from otherwise proceeding in excess of his jurisdiction in the matter of said tax claim.

On January 16, 1947, the Referee announced his conclusion that he had jurisdiction, overruled the objection to the jurisdiction, but refused to make an Order from [62] which an appeal would lie, and continued the matter to February 24 for the taking of testimony. The petitioners alleged that unless the Honorable Benno M. Brink is restrained, he will take testimony and re-determine the assessed valuation of said property.

The Referee overruled the objection to the jurisdiction.

This Court, on May 21, 1947, concluded as follows:

“It is the opinion of the court that the Referee Benno M. Brink, should enter a written Order, either sustaining or denying jurisdiction, and that after the entry of said Order, either party may appeal.”

On September 8, 1947, Benno M. Brink, Referee in Bankruptcy, filed in this court, pursuant to said direction, Findings of Fact and Conclusions of Law. Finding of Fact IX was as follows:

“That said debtor owned and had control on the first Monday in March, 1946, of all the personal property listed in the declaration made in its behalf by V. W. Nelson, auditor, and assessed by the County Assessor; that the sole question before this court is the determination of the value of such property for county tax purposes on the first Monday in March, 1946;”

The Referee's Conclusions of Law were as follows:

“That, at the time the aforesaid petition under Chapter Eleven of the Bankruptcy Act was filed in this proceeding, the assessment for County tax purposes on the personal property here involved had not become final, and that, if the said petition had not been filed, the debtor corporation could have applied to the Board of Supervisors of Los Angeles County, sitting as a Board of Equalization, for an equalization or reduction of said assessment, and that, [63] accordingly, this Court, ever since the filing

herein of the said petition under Chapter Eleven of the Bankruptcy Act, has had and still has exclusive jurisdiction under section 64 (a) 4 and section 311 of the Bankruptcy Act to determine the value of the said personal property for County tax purposes.”

The Court has examined the file and concludes as follows:

On the first Monday in March, 1946, the debtor herein was the owner of certain real and personal property. On May 14, 1946, a declaration for county tax purposes was made and verified on behalf of the debtor by one V. W. Nelson, its auditor, and the same was thereupon filed with the County Assessor; said statement shows that the value of the debtor's personal property was \$355,710.00 as of the first Monday in March, 1946. Thereafter, on an undisclosed date, the County Assessor valued the said personal property for county tax purposes at said sum of \$355,710.00.

On June 3, 1946, the debtor commenced this proceeding by filing herein its petition under Chapter XI of the Bankruptcy Act and, on the same date, appropriate orders were made herein permitting it to remain in possession of its assets and to continue the operation of its business under the control of this Court. The said petition under Chapter XI of the Bankruptcy Act is still pending, but no order has thus far been entered confirming the debtor's plan of arrangement with its creditors. The debtor still continues in possession of its assets, but all of its business operations have been suspended.

In the latter part of 1946, the debtor received from the County Tax Collector a tax bill covering the taxes on its real and personal property as of the first Monday in [64] March, 1946. Thereafter, on an undisclosed date, the County Assessor valued the said personal property for county tax purposes at said sum of \$355,710.00.

On June 3, 1946, the debtor commenced this proceeding by filing herein its petition under Chapter XI of the Bankruptcy Act and, on the same date, appropriate orders were made herein permitting it to remain in possession of its assets and to continue the operation of its business under the control of this Court. The said petition under Chapter XI of the Bankruptcy Act is still pending, but no order has thus far been entered confirming the debtor's plan of arrangement with its creditors. The debtor still continues in possession of its assets, but all of its business operations have been suspended.

In the latter part of 1946, the debtor received from the County Tax Collector a tax bill covering the taxes on its real and personal property as of the first Monday in March of said year. Said taxes became a lien on the real property of the debtor as of such first Monday in March. The said tax bill shows the assessed value of the personal property of the debtor to be the aforesaid sum of \$355,710.00 and that the amount of the tax thereon is the sum of \$22,333.25.

On December 6, 1946, the debtor filed herein its petition for an order to show cause requiring the County Assessor and the County Tax Collector to

show cause why the Referee should not determine the amount of taxes due by it to the County of Los Angeles and why the Referee should not direct the debtor as to the manner and time of payment of such taxes. An order to show cause being issued on the said petition, the Assessor and the Tax Collector, in due course, filed their answer thereto and also their objections to the jurisdiction of the Referee to proceed in the premises. [65]

After a hearing the Referee made an oral ruling overruling the objections to the jurisdiction and directing that the hearing proceed on the merits.

Thereupon a Motion for Permission to File Petition for Writ of Prohibition was filed by the claimant and upon the hearing thereon an Order was made on May 21, 1947 directing the Referee to enter a written order upon his said determination on the jurisdictional controversy. Such an order was made on September 8, 1947, and thereafter this matter came before this Court upon the Petition for Review by the County Assessor and County Tax Collector.

The debtor's original Order to Show Cause to determine the amount of taxes due the County of Los Angeles still pends before the Referee awaiting the determination there of the power, right, and jurisdiction of the Referee to ascertain and determine the tax in question.

The tax in question was an obligation of the debtor as of a date prior to the filing of the Chapter XI proceedings. It was not an obligation within the classification of administration expenses since it arose on the first Monday of March, 1946, and prior

to the proceeding under Chapter XI, and in so far as we are concerned, the claimant was a creditor with a provable claim in bankruptcy proceedings. This was not a claim coming into being as a result of the operation of a business by a receiver, trustee, or as here, the debtor in possession. *Boteler v. Ingals*, 308 U. S. 57.

The question to be answered is: "Does the Referee have jurisdiction to pass upon the amount of tax claim which the debtor maintains is grossly excessive?"

Section 64a (4) of the Bankruptcy Act provides:

"... in case any question arises as to the [66] amount or legality of any taxes, such question shall be heard and determined by the court."

Following the amendment to the Bankruptcy Act (Chandler Act effective September 22, 1938) the tax agencies were placed upon the same general basis as all other claims. The taxing agencies were required to file their claims in the manner of and within the time fixed for other claims. Prior to the said amendment, the Referee in ordering the disbursement of the funds of the bankruptcy estate was admonished by the prior Section 64a as follows:

"The Court shall order the trustees to pay all taxes legally due and owing by the bankrupt . . ."

and under this statute the law as developed by many cases uniformly held that the bankruptcy court had not only the duty but also the power and jurisdiction to hear and determine the matter of the amount of

tax "legally due." In fact, the bankruptcy services and text books treated the subject as a settled condition of the law of bankruptcy distribution and we observe that many of the state taxing statutes were cast with this power of the bankruptcy court in contemplation. For example, Section 18649 (California State Personal Income Tax) provides:

"Upon bankruptcy . . . any deficiency . . . may be immediately assessed."

and Section 18651:

"Claims for deficiency . . . may be presented, for adjudication in accordance with the law, to the court before which the bankruptcy . . . is pending, despite the pendency of proceedings for the redetermination of the deficiency pursuant to a petition to the board. No petitions for re-determination may be filed with the board after the adjudication of the bankruptcy . . ."

Approximately the same language appears in Section 19(i) of the State Compensation Income Tax [67] Act and under the State Bank and Corporation Franchise Tax Act.

Section 25(i).

"Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding . . . any deficiency . . . determined by the commission may be immediately assessed . . . claims for deficiency . . . may be presented for adjudication in accordance with law to the court before which the bankruptcy . . . is pending despite

the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the State Board of Equalization but no petition for any such redetermination shall be filed with said board after the adjudication of bankruptcy.”

Some reported cases went so far as to indicate that the bankruptcy court could redetermine the question as to the amount and legality of the tax after the same had been passed upon by the state tax board or agency. See numerous cases cited in Vol. 3, *Colliers on Bankruptcy*, 14 ed. page 2146-7, note 13. But the rule was otherwise where the determination had been made by a state or federal court. Page 2149, note 19.

The indicated power being apparently superior to the ancient doctrine of the invulnerability of the principle of *res adjudicata*.

This questionable extension no doubt prompted two recent Supreme Court decisions: *Arkansas Corporation Commission v. Thompson*, 313 U. S. 132, and *Gardner v. New Jersey*, 328 U. S. 850; 152 F. (2) 408; 329 U. S. 565, 91 L. Ed. Adv. P 410 (1-20-1947).

Prior thereto the Supreme Court had supported the doctrine announced many times by the majority of the Circuit Courts that the bankruptcy court had the power to fix and determine the amount and legality of tax claims. *New Jersey v. Anderson*, 203 U. S. 483. [68]

The case of *In the Matter of Gustav Schaefer Company, Bankrupt*, 103 F. 2d 237 (Cert. denied

308 U. S. 579) 6th Circuit, was determined prior to the first Supreme Court case of *Arkansas Corporation Commission vs. Thompson*. *Supra*. In speaking of the power of the bankruptcy court to pass upon the matter of taxes (Sec. 64a “. . . in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court . . .”):

“The economic justification of the statute and its validity is fully set out and sustained in the following cases: *Whitney v. Dresser*, 200 U. S. 532, 536, 15 Am. B. R. 326, 26 S. Ct. 316, 50 L. Ed. 584; *New Jersey v. Anderson* 203 U. S. 483, 495, 17 Am. B. R. 63, 27 S. Ct. 137, 51 L. Ed. 284; *Van Huffel v. Harkelrode, Treas.*, 284 U. S. 225, 231, 18 Am. B. R. (N. S.) 730, 52 S. Ct. 115, 76 L. Ed. 256, 78 A. L. R. 453; *Truman v. Thalheimer* (C. C. A. 9th Cir.) 19 F. (2d) 468; *In re De Angeles* (C. C. A. 10th Cir.), 15 Am. B. R. (N. S.) 274, 36 F. (2d) 218; *Henderson County v. Wilkins* (C. C. A., 4th Cir.), 16 Am. B. R. (N. S.) 359, 43 F. (2d) 670; *In re Clayton Magazines* (C. C. A., 2nd Cir.), 29 Am. B. R. (N. S.) 97, 77 F. (2d) 852; *City of Springfield v. Hotel Charles Co.* (C. C. A., 1st Cir.), 31 Am. B. R. (N. S.) 604, 84 F. (2d) 589; *Dickson v. Riley* (C. C. A., 8th Cir.), 32 Am. B. R. (N. S.) 279, 86 F. (2d) 385; *Board of Directors St. Francis Levee Dist. v. Kurn* (C. C. A. 8th Cir.), 34 Am. B. R. (N. S.) 523, 91 F. (2d) 118; *In re Laug Body Co.* (C. C. A. 6th Cir.), 35 Am. B. R. (N. S.) 35, 92 F. (2d) 338.”

Likewise the 9th Circuit in the case of *United States v. Coast Wineries, Inc.*, 131 Fed. 2d 643, determined:

“The jurisdiction of the bankruptcy court over the subject matter of taxes is specifically granted by the [69] Bankruptcy Act Section 64, sub. (a), as amended, 44 Stat. 662, 666, 11 U. S. C. A. Section 104, sub. (2), which, among other things, provides that ‘The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States.’ This language necessarily implies that in controverted matters the court must judicially determine the amount of the tax due.”

See *Referees 8 Corpus Juris Sec. Pg. 976 in re De Angeles* 36 F. (2) 218.

However, applying the doctrine of the said two recent Supreme Court cases solely to the factual situations therein, we find that the distinction rests upon the doctrine of *res adjudicata* in that the Supreme Court determined that the two agencies fixing the taxes were quasi-judicial bodies and that the proper respect and sanction should be accorded their determinations. On both occasions the court pointed out that the bodies were not ministerial but were quasi-judicial with a noticed hearing, production of witnesses prior to ascertainment of the tax, the right of review and appeal, etc. And as to its former decision of *New Jersey v. Anderson*, 203 U. S. 483, Justice Black, for the court, said that where “A state agency, with-

out a hearing, imposed a tax . . . we do not think it was the intention of Congress to conclude the Bankruptcy Courts by the findings of boards of this character . . . But the Arkansas Corporation Commission does not act ministerially. On the contrary, it is a quasi-judicial agency entrusted with wide responsibilities . . .”

Following the decision in the Arkansas case, it is interesting to observe the impression which was made upon the lower Federal Courts.

Middlekamp v. Lea Trust (In re Ingersoll Co.), 148 F. 2d 282, 10th Circuit, determined that where taxes had been assessed no effort had been made in the manner and within the time prescribed by state law for correction of errors [70] or inequalities in valuation of the property and the assessment had become final, the taxes were then legally due and owing within the meaning of Section 64a of the Bankruptcy Act and the provisions of said section did not authorize or empower the bankruptcy court to revise and redetermine in respect of valuation an assessment made under warrant of state law.

In the case of *Baumann v. Sheehan*, 140 Fed. 2d 747, 8th Circuit, a determination was that the Bankruptcy Court had only that power which a state court had in equity to review the tax and that as a Missouri Court would not have the power to review the tax neither would the court of bankruptcy. “If the rule were otherwise, it would make the bankruptcy court a ‘super-assessment tribunal’ over

the state taxing agencies which broad power was not intended to be conferred by Congress. *Arkansas Corporation Commissioner v. Thompson, supra.*”

Commonwealth of Pennsylvania v. Aylward, 154 Fed. 2d 714, 8th Circuit: “At the time the claim was considered by the Bankruptcy Court the assessments had become final, and so far as the Pennsylvania law is concerned they were legally due and owing. The provision in Section 64a does not authorize or empower the Bankruptcy Court to revise and re-determine in respect to valuation an assessment made pursuant to state law. . . . The tax payer, having failed to seek relief in the administrative or quasi-judicial tribunals of Pennsylvania and the remedies they afford, cannot we think, seek the aid of the Bankruptcy Court under the provisions of Section 64a of the Bankruptcy Act.”

On the other hand, other circuits have taken the pronouncements of the *Arkansas* and *Gardner* cases only in their [71] most direct application to the respective factual conditions therein contained and have called attention to what may be a much narrower application, that is the lack of power and jurisdiction in the bankruptcy court to question the amount or legality of those taxes which have been thereto ascertained by a quasi-judicial body at a quasi-judicial hearing. In other words the application of *res adjudicata* was resorted to and a second hearing was prohibited. The enunciation of this doctrine was in no doubt salutary and much to be desired. The prohibition of rehearing, re-examination, etc. was quite proper in an orderly judicial

process where the issue had been ascertained by a proper body or agency having the power to hold hearings on notice, require the production of witnesses and the power to make ultimate findings and order on the tax, subject only to the right of appeal, and thus bind all parties.

The minimum requirement apparently would be a determination by a quasi-judicial body in conjunction with quasi-judicial hearing, or at least the right to such hearing.

The Second Circuit in a well-reasoned case, *Lyford vs. State of New York*, 137 Fed. 2d 782, discusses its views of the condition of the law following the Supreme Court's decision in the Arkansas case:

“Prior to the decision of *Arkansas Corporation Commission v. Thompson*, 313 U. S. 132, 45 Am. B. R. (N. S.) 462, 61 S. Ct. 888, 85 L. Ed. 1244, the great majority of the decisions had upheld a wide power in the bankruptcy court to review and redetermine local taxes under Sec. 64 (a) or its predecessor. These cases relied in substance upon *State of New Jersey v. Anderson*, 203 U. S. 483, 17 Am. B. R. 63, 27 S. Ct. 137, 51 L. Ed. 284, where such a redetermination by the [72] Bankruptcy Court of a New Jersey tax had been upheld. See 3 Collier, *op. cit. supra*, pp. 2145, 2146, and citations; and *cf. Dickinson v. Riley* (C. C. A. 8th Cir.), 32 Am. B. R. (N. S.) 279, 86 F. (2d) 385; *In re General Film Corp.* (C. C. A., 2nd Cir.), 29 Am. B. R. (N. S.) 97, 77 F. (2d) 852.

There had been, however, a minority view, of which perhaps the leading examples were *In re Gould Mfg. Co.* (D. C., E. D. Wis.), 29 Am. B. R. (N. S.) 733, 11 F. Supp. 644 (noted with approval in 45 Yale L. J. 734), and *In re 168 Adams Bldg. Corp.* (C. C. A. 7th Cir.), 40 Am. B. R. (N. S.) 754, 105 F. 704, certiorari denied *Steinbrecher v. Toman*, 308 U. S. 623, 60 S. Ct. 378, 84 L. Ed. 520. See, also, 50 Yale L. J. 165, stating the arguments against restriction of the state's taxing rights in criticism of *In re Missouri Pac. R. Co.* (D. C., E. D. Mo.), 43 Am. B. R. (N. S.) 141, 33 F. Supp. 728, which was later affirmed, *Arkansas Corporation Commission v. Thompson* (C. C. A., 8th Cir.), 44 Am. B. R. (N. S.) 536, 116 F. (2d) 179, but was reversed by the Supreme Court in the case first cited. There is no doubt that the Supreme Court's decision renders many at least of the earlier cases no longer valid precedents, or that it considerably restricts interference by the bankruptcy with state-taxing powers."

"There were two major questions before the Supreme Court in that case: first, whether Sec. 64 (a) applies in railroad reorganization proceedings, and second, whether if applicable it allowed redetermination of a tax finally settled by state authorities. The first was expressly left undecided by the court."

"Our present problem, however, is not the determination of priorities, but merely the extent of power of the bankruptcy court to decide

upon tax claims. . . . On the other hand, the effect of the Thompson case is, in any event, to restrict [73] the court to finding if the tax is legally due and to deny it power to review the action of a quasi-judicial taxing body in setting, after due hearing, a valuation of property for tax purposes. We conclude, therefore, that the court below did have power to decide whether the claimed tax was 'legally due.'

"There still remains the major question of the extent of that power as applied to the present circumstances. And here what seems the probable limitations of the Thompson case, as ably pointed out by Professor Moore, 3 Collier, op. cit. supra, pp. 2164-2167, becomes important. In that case the court distinguishes the Anderson case, because in the latter the New Jersey tax assessors acted only in a ministerial capacity, while the Arkansas Commission acted in a quasi-judicial capacity and had finally settled the tax upon the participation of the trustee, who then did not take the appeal provided by the state law. Hence in the Thompson case the assessment of the tax had become *res adjudicata* by virtue of the state proceedings when the bankruptcy court assumed the power to consider it. Moreover, the question involved was that of valuation of the property of the railroad in the state—a matter the courts generally would not review on appeals from administrative bodies and which the court concluded Congress did not intend should be reviewed in

bankruptcy. In other words, the decision concerns a tax finally settled without appeal by the state authorities and an attack not on issues of legality, but on issues of valuation. Review in such a case involves the upsetting of state-taxing activities in ways beyond that permitted as to administrative action generally, as had been pointed out by commentators and as was held by the Supreme Court.” [74]

The Third Circuit in the case entitled *In re Monongahela Rye Liquors, Inc.*, 1441 F. 2d 864 in 1944, in referring to the amendment of Section 64a by the Chandler Act states:

“The Chandler Act, to which the instant case is subject, not only appears not to have taken away or restricted whatever may have been a bankruptcy court’s jurisdiction to redetermine tax claims, but, on the contrary, seems to indicate more clearly the existence of the power.”

“(1) Generally speaking, therefore, we think that a bankruptcy court has the power to redetermine tax claims in the exercise of its jurisdiction under the Chandler Act. But we also think that certain factual determinations in respect of such claims, when competently made in another forum, may be conclusive at a hearing thereon in a bankruptcy court. Such we believe is indicated by a comparative reading of the decisions in *New Jersey v. Anderson*, and *Arkansas Corporation Commission v. Thompson*, *supra*.”

“(2) The view we take of the decision in the Thompson case is that where, after a hearing, a quasi-judicial body, thereunto duly empowered, determines the amount of a tax due, with the right on the part of the taxpayer to a judicial review of the determination, all conformable with the requirements of due process, such determination, upon becoming final by operation of law, is conclusive upon a court of bankruptcy save for mathematical error in the computation of the amount of the tax or legal error in its assessment. Cf. *In re 168 Adams Building Corporation*, D. C., 27 F. Supp. 247, 249, 250, affirmed sub nom. *Steinbrecher v. Toman*, 7 Cir., 105 F. 2d 704, certiorari denied 308 U. S. 623, 60 S. Ct. 378, 84 L. Ed. 520; *In re Schach*, D. C., 17 F. Supp. 437, 438, 439; *In re Gould Mfg. Co.* D. C., 11 F. Supp. 644, 649. In *Lyford, v. City of New York*, 137 [75] F. 2d 782, 786, the Court of Appeals for the Second Circuit said that ‘. . . the effect of the Thompson case is, in any event, to restrict the court to finding if the tax is legally due and to deny it power to review the action of a quasi-judicial taxing body in setting, after due hearing, a valuation of property for tax purposes.’ And, again, *In re Hotel Martin Co. of Utica*, D. C., 41 F. Supp. 392, 394, it was said that ‘The Arkansas case, supra, illustrates the law relative to real property assessments by state or local authorities where the review of the assessments as provided by law was not taken.’

“(3) The question in any instance, therefore, is whether the circumstances necessary to justify any exercise of bankruptcy’s power to redetermine a tax claim are present. We think they are in the instant case. The tax payer having failed to file a return, the tax assessments against it were based upon estimated ‘settlements’ arbitrarily made by the state’s Department of Revenue without hearing the tax payer.”

In the instant case the time for objection to the assessment before the Board of Equalization had not expired at the time of the within bankruptcy proceeding. There had been no hearing, finding or final order on the tax at the time of bankruptcy and it therefore appears that the determination of the amount of tax may be had in these pending bankruptcy proceedings, and accordingly this Court determines that the objection to the jurisdiction should be overruled.

It Is So Ordered.

Dated at Los Angeles, California this 31st day of December, 1947.

/s/ J. F. T. O’CONNOR,
Judge.

[Endorsed]: Filed Oct. 31, 1947. [76]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO
CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, petitioners herein, appeal to the Circuit Court of Appeals for the Ninth Circuit from the Order Overruling Objections to the Jurisdiction Re Tax Claims entered in this matter on December 31, 1947, and from the whole thereof.

Dated: January 29, 1948.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel,
Attorneys for Petitioners.

[Endorsed]: Filed and mailed copy to Cobb & Utley, Attorneys for Debtor, Jan. 29, 1948. [77]

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Know All Men by These Presents, that the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Aero Services Inc., debtor in the above entitled matter, in the penal sum of Two Hundred Fifty and No/100 Dollars (\$250.00), to be paid to the said Aero Services Inc., its successors or assigns, or legal representatives, for which payment well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, firmly by these presents.

The Condition of the Above Obligation Is Such, that

Whereas, John R. Quinn, Los Angeles County Assessor, and H. L. Byram, Los Angeles County Tax Collector, have appealed or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an Order overruling the objection of John R. Quinn, Los [78] Angeles County Assessor, and H. L. Byram, Los Angeles County Tax Collector, to the jurisdiction of the Bankruptcy Court regarding tax claims, made and entered on December 31st, 1947 by the United States District Court for the Southern District of California, Central Division, in the above entitled action.

Now, Therefore, if the above named Appellant, John R. Quinn and H. L. Byram, Assessor and Tax

Collector respectively, shall prosecute said appeal to effect and answer all costs which may be adjudged against them if the appeal is dismissed, or the Order affirmed, or such costs as the Appellate Court may award if the Order is modified, then this obligation shall be void; otherwise to remain in full force and effect.

It Is Hereby Agreed by the Surety that in case of default or contumacy on the part of the Principal or Surety, the Court may, upon notice to them of not less than ten days, proceed summarily and render judgment against them, or either of them, in accordance with their obligation, and award execution thereon.

Signed, sealed and dated this 29th day of January, 1948.

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,

By /s/ ROBERT HECHT,
Attorney in Fact.

Attest:

/s/ S. M. SMITH,
Agent.

Examined and recommended for approval as provided in Rule 8.

HAROLD W. KENNEDY,
County Counsel,

By /s/ ANDREW O. PORTER,
Deputy.

State of California,
County of Los Angeles—ss.

On this 29th day of January, 1948, before me, Theresa Fitzgibbons, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Robert Hecht, known to me to be the Attorney-in-Fact, and S. W. Smith, known to me to be the Agent of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit Company of Maryland thereto and their own names as Attorney-in-Fact and Agent, respectively.

/s/ THERESA FITZGIBBONS,
Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires May 3, 1950.

[Endorsed]: Filed Jan. 29, 1948. [79]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

The points upon which appellants intend to rely on this appeal are as follows:

I.

That the order of the District Court was erroneous in affirming the order of the Referee and overruling appellants' objection that the Bankruptcy Court has no jurisdiction to review the amount of an assessment to redetermine the assessed valuation of property for County tax purposes where such value has been determined under valid state law by a quasi-judicial agency.

II.

That said order was erroneous because the assessed valuation and the assessment were regularly determined by the County Assessor, a quasi-judicial officer, in accordance with the Constitution and laws of the State of California, with [80] opportunity for quasi-judicial review thereof; and such assessed valuation and such assessment have the force, finality and effect of a judgment and have become final and could not have been questioned in any state court at the time of filing herein of the debtor's petition to redetermine such assessed valuation.

III.

That said order was erroneous because the assessed valuation was determined and the assessment fixed by the County Assessor and equalized by the

County Board of Equalization, a quasi-judicial body, in accordance with State law and no complaint of want of equalization or application for equalization or complaint of over-assessment or other objection to the assessment having been made before the County Board of Equalization, said assessment and assessed valuation and the amount of tax based thereon had become final under State law and had the force, finality and effect of a judgment before the time of filing of the debtor's petition herein to redetermine assessed valuation.

IV.

Said order was erroneous because even if the time to appear before the Board of Equalization had been extended by the filing of the Petition under Chapter XI or by any provision of the Bankruptcy Act, the time to appear had expired, no appearance had been made and the assessment and the assessed value as made and determined by the County taxing authorities had become final.

V.

Said order was erroneous because the Bankruptcy Court lacked jurisdiction itself to determine the assessed value of property for County tax purposes even if the assessment and [81] the determination of assessed valuation by the County taxing authorities had not become final.

VI.

That said order was erroneous because the debtor herein in possession, pursuant to order of Court, operating its business under Chapter XI of the

Bankruptcy Act, failed to exhaust the remedies provided by State law, failed to apply to the County Board of Equalization or to object to said assessment or said assessed valuation within the time allowed by law, although it had ample opportunity to do so, or within the time as extended by any provision of the Bankruptcy Act, but allowed the assessment to become final and the tax to become delinquent; that the determination by the County Assessor as equalized by the County Board of Equalization is now *res adjudicata* and the debtor is concluded thereby and estopped to question the same.

VII.

That said order was erroneous because in a Chapter XI proceeding the Bankruptcy Court lacks jurisdiction to redetermine the assessed valuation as determined by the County Assessor where the tax based thereon is secured by lien on real estate, is entitled to priority and is not dischargeable in bankruptcy.

VIII.

That said order was erroneous because the tax here involved is secured by a valid and existing lien antedating the adjudication and all proceedings herein in bankruptcy and is not affected thereby.

IX.

That said order was erroneous because the assessment was based on a declaration filed by the debtor corporation as [82] required by the Constitution and laws of California; no other declaration having been filed, the debtor is estopped to deny the authority

of its auditor to file the same and it would be immaterial if the values contained therein were excessive or erroneous.

X.

That said order was erroneous because the Court had no jurisdiction to grant the relief prayed for in the debtor's petition as limited by the debtor's stipulation that the sole question before the Referee was the determination of the value of such property for County tax purposes on the first Monday in March, 1946. (Finding IX of the Referee.)

XI.

Said order was erroneous because the debtor's petition does not state facts sufficient to raise a federal question within the jurisdiction of the Bankruptcy Court to consider.

Dated January 29, 1948.

HAROLD W. KENNEDY,

County Counsel, and

/s/ ANDREW D. PORTER,

Deputy County Counsel,

Attorneys for John R. Quinn, County Assessor, and

H. L. Byram, County Tax Collector of Los Angeles County, Appellants. [83]

[Affidavit of service by mail attached.]

[Endorsed]: Filed Jan. 29, 1948. [84]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Appellants designate the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Petition for Order to Show Cause in Connection with Tax Claim, filed December 6, 1946.
2. Answer to Petition for Order to Show Cause in Connection with Tax Claim, filed December 18, 1946.
3. Suggestion of Lack of Jurisdiction of Subject Matter, filed December 20, 1946.
4. Findings of Fact and Conclusions of Law Re Tax Claim, filed September 8, 1947.
5. Order Upholding Jurisdiction Re Tax Claim, filed September 8, 1947.
6. Petition for Review of Referee's Order by Judge filed October 6, 1947. [85]
7. Referee's Certificate on Petition for Review of Order Upholding Jurisdiction Re Tax Claims, filed October 27, 1947.
8. Order of the District Judge entered December 31, 1947.
9. Notice of Appeal.
10. Statement of Points on which Appellants intend to rely.
11. This Designation.

Dated: January 29, 1948.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel,
Attorneys for Petitioners.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Jan. 29, 1948. [86]

[Title of District Court and Cause.]

MOTION TO EXTEND TIME FOR FILING
RECORD AND DOCKETING APPEAL

Come now John R. Quinn, County Assessor, and
H. L. Byram, County Tax Collector of Los Angeles
County, appellants herein, and show :

- (1) Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was filed herein on the 29th day of January, 1948.
- (2) On January 29, 1948, appellants filed their designation of record on appeal herein.
- (3) The clerk has been unable to complete the preparation of the record on appeal herein and will be unable to complete the same within the period of forty days from the date of filing of such notice of appeal for the reason that appellants have just learned that the order of the Judge dated December 31, 1947 has never been entered in the civil docket, pursuant to Rule 58, Rules of Civil Procedure, although apparently entered [88] in the docket pursuant to Order No. 1, General Orders in Bankruptcy, and appellants desire to have a new order signed and entered in accordance with Rule 58, and to use the same record on appeal from such new order, and it is therefore necessary to secure an extension of time to prepare the record.

Wherefore, appellants move the court for an order extending the time within which the record on appeal may be filed and the appeal docketed in said Circuit Court of Appeals to and including April 28, 1948.

Dated: March 8, 1948.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel,
Attorneys for Appellants.

[Endorsed]: Filed March 8, 1948. [89]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD AND DOCKETING APPEAL

Motion having been made by John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, appellants herein, for an order extending time for filing record and docketing appeal in the Circuit Court of Appeals; and it appearing that the time will expire on March 9, 1948, unless extended, and good cause appearing therefor:

It is hereby ordered that the time for docketing appeal of John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles

County, in the Circuit Court of Appeals, and for filing the record therein, is hereby extended to and including April 26, 1948.

Dated: the 8th day of March, 1948.

J. F. T. O'CONNOR,
Judge.

Presented by

/s/ ANDREW O. PORTER,
Deputy County Counsel.

[Endorsed]: Filed March 8, 1948. [90]

[Title of District Court and Cause.]

ORDER OF JUDGE AFFIRMING ORDER OF
REFEREE IN RE TAX CLAIM AND
OVERRULING OBJECTIONS TO THE
JURISDICTION

John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, having filed on October 6, 1947, a petition for review of the order of the Honorable Benno M. Brink, Referee in Bankruptcy, entered September 8, 1947, upholding jurisdiction re tax claims; and the Referee having filed herein in his certificate on petition for review dated October 27, 1947, together with his findings of fact and conclusions of law and order, and other papers material thereto; and the matter coming on regularly for hearing; and points and authorities having been filed in support of said petition for review, and by the debtor

in reply thereto; and oral argument having been waived; and the Court being fully advised in the premises, the Court adopts the Findings of Fact and Conclusions of Law made by the Referee and makes its order as follows:

It is ordered, adjudged and decreed that the order of the Referee entered September 8, 1947, upholding jurisdiction re tax claims is sustained and affirmed and the objections to the jurisdiction are overruled.

Dated: March 26, 1948.

/s/ J. F. T. O'CONNOR,
Judge.

Approved as to form:

COBB & UTLEY,
By /s/ FRANCIS B. COBB,
Attorneys for Debtor.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel.

Attorneys for John R. Quinn, County Assessor, and
H. L. Byram, County Tax Collector of Los Angeles County.

[Endorsed]: Filed, Judgment entered and Docketed Mar. 26, 1948. Book COB 49, page 526. [92]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT
COURT OF APPEALS

Notice is hereby given that John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, petitioners herein, appeal to the Circuit Court of Appeals for the Ninth Circuit from the Order of Judge Affirming Order of Referee in re Tax Claim and Overruling Objections to the Jurisdiction entered in this matter on March 26, 1948, in Civil Order Book 49, Page 526, and from the whole thereof.

Dated: April 7th, 1948.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel,
Attorneys for Petitioners.

[Endorsed]: Filed mailed copy to Francis B. Cobb, Atty. for Debtor, Apr. 7, 1948. [93]

[Title of District Court and Cause.]

SUPPLEMENTAL STATEMENT OF POINTS
ON WHICH APPELLANTS INTEND TO
RELY.

Appellants hereby adopt, with the same force and effect as if herein again set forth in full, as the statement of points on which they intend to rely the statement dated January 29, 1948, now on file herein.

Dated: April 7, 1948.

HAROLD W. KENNEDY,

County Counsel, and

/s/ ANDREW O. PORTER,

Deputy County Counsel.

Attorneys for John R. Quinn, County Assessor, and
H. L. Byram, County Tax Collector of Los Angeles County, Appellants. [94]

Received copy of the within Supplemental Statement of Points on which Appellants Intend to Rely this 7th day of April, 1948.

FRANCIS B. COBB,

Attorney for Debtor-Appellee.

[Endorsed]: Filed April 7, 1948. [95]

[Title of District Court and Cause.]

SUPPLEMENTAL DESIGNATION
OF RECORD

Appellants hereby adopt their designation of record filed on January 29, 1948, and in addition to

the matter designated therein hereby designate the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Petition for arrangement under Chapter XI (omitting the schedules.)
2. Approval and Order of Reference to Benno M. Brink, Referee.
3. Affidavit for and Order Extending Time Within which to File Petition for Review dated September 17, 1947.
4. Order of Judge Affirming Order of Referee in re Tax Claim and Overruling Objections to the Jurisdiction dated March 26, 1948, entered in Civil Order Book 49, Page 526.
5. Notice of Appeal filed April 7, 1948.
6. Supplemental Statement of Points on which Appellants intend to rely filed April 7, 1948.
7. This Designation.

Dated: April 7th, 1948.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel,
Attorneys for Appellants.

Received copy of the within Supplemental Designation of Record this 7th day of April, 1948.

FRANCIS B. COBB,
Attorney for Debtor-Appellee.

[Endorsed]: Filed April 7, 1948. [98]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 98, inclusive, contain full, true and correct copies of Petition Under Chapter XI (Section 322) of the Bankruptcy Act; Approval of Debtor's Petition and Order of Reference under Section 322 of the Bankruptcy Act; Referee's Certificate on Petition for Review of Order Upholding Jurisdiction re Tax Claims; Petition for Order to Show Cause in Connection with Tax Claim; Answer to Petition for Order to Show Cause in Connection with Tax Claim; Suggestion of Lack of Jurisdiction of Subject Matter (Rule 12(h) (2) Civil Procedure); Findings of Fact and Conclusions of Law of Referee re Tax Claim; Affidavit for and Order Extending Time Within Which to File Petition for Review; Petition for Review of Referee's Order by Judge; Minute Order Entered December 31, 1947; Opinion; Notice of Appeal filed Jan. 29, 1948; Undertaking for Costs on Appeal; Statement of Points on Which Appellants Intend to Rely; Designation of Record; Motion to Extend time for Filing Record and Docketing Appeal; Order Extending Time for Filing Record and Docketing Appeal; Order of Judge Affirming Order of Referee in re Tax Claim and Overruling Objections to the Jurisdiction; Notice of Appeal filed April 7, 1948; Supplemental Statement of Points

on Which Appellants Intend to Rely and Supplemental Designation of Record which constitute the transcript of record on the appeals of John R. Quinn, County Assessor, et al to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$24.15 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 21st day of April, A.D., 1948.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. John R. Quinn, County Assessor, and H. L. Byram, County Tax Collector of Los Angeles County, Appellants, vs. Aero Services, Inc., a corporation, debtor, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

Filed April 23, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11907

JOHN R. QUINN, County Assessor and H. L.
BYRAM, County Tax Collector of Los Angeles
County,

Appellants.

vs.

AERO SERVICES, INC., a California corporation,
Debtor-Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

Appellants adopt as their statement of points on which they intend to rely under Rule 19 (6) the statement of points filed in the District Court January 29, 1948.

Dated: April 26, 1948.

HAROLD W. KENNEDY,
County Counsel, and
/s/ ANDREW O. PORTER,
Deputy County Counsel.

Attorneys for John R. Quinn, County Assessor and
H. L. Byram, County Tax Collector of Los
Angeles County, Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed April 27, 1948.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD

Appellants hereby designate the parts of the record necessary for consideration under Rule 19(6) of the appeal as follows: Those portions of the record designated under date of January 29, 1948, in the District Court, together with those portions designated in the supplemental designation of record under date of April 7, 1948, in the District Court.

Dated: April 26, 1948.

HAROLD W. KENNEDY,

County Counsel, and

/s/ ANDREW O. PORTER,

Deputy County Counsel.

Attorneys for John R. Quinn, County Assessor and
H. L. Byram, County Tax Collector of Los
Angeles County, Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed April 27, 1948.

